The Council re-assembled at the Council Chamber, Fort St. George, at 11 a.m. on Monday, the 2nd day of April 1923, the hon. the DEPUTY PRESIDENT presiding.

I

COMMUNICATION TO THE COUNCIL.

With reference to resolution No. 168 passed by the Legislative Council on the 13th December 1921, the SECRETARY laid on the table a list of appointments on Rs. 500 and above created between 1st December 1922 and 28th February 1923.*

II

THE MADRAS HINDU RELIGIOUS ENDOWMENTS BILL, 1922—*cont.*

The consideration of the Madras Hindu Religious Endowments Bill, 1922, was resumed.

Clause 44.

(Amendment No. 157.)

Rai Bahadur T. M. NARASIMHACHARLU :—" Sir, I beg to move—

Between the words ' professes ' *and* ' the Hindu religion ' *insert the words* ' and practices '.

" It is no doubt true, Sir, that in the case of the Commissioners a similar amendment was lost. But this is quite a different thing ; and I submit with due deference that the trustee of a temple must not merely be a person professing the Hindu religion but must also be a Hindu, i.e., he must practice the customs pertaining to his caste according to the Hindu religion. It was no doubt said, Sir, the other day, that the Government would have to employ a number of detectives to find out whether a person was really practising the Hindu religion or not. I submit that no kind of detective is necessary for finding out a person who is actually a Hindu. No detective will be necessary, and I shall be glad to render any assistance, if in the choice of a trustee it is necessary to find out whether a particular applicant is a true Hindu or not. I submit, Sir, that it is very necessary in the case of a trustee who will be in close touch with the several rites, ceremonies and practices of a temple that he must be a person practising the Hindu religion."

The hon. the RAJA OF PANAGAL :—" Mr. President, I have already explained my difficulties with respect to this question in connexion with a similar amendment. My hon. friend, Mr. Narasimhacharlu, offers himself to be a detective. Well, I should have welcomed him had it not been for the fact that he might have his own standard as to who is a Hindu and who is not. If we apply a standard fixed in the Bill there will be no difficulty. The real difficulty is that it is such a difficult task to gauge and find out who is practising Hinduism and who is not. Hence it is impossible to accept this amendment."

Rai Bahadur T. M. NARASIMHACHARLU :—" I beg to submit that I am not at all convinced by his arguments."

The amendment was put and lost.

* Vide Appendix on page 3162 infra.

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Clause 44—cont.

(Amendment No. 158.)

Rao Bahadur T. NAMBERUMAL CHETTIYAR :—" Mr. President, Sir, I beg leave to move—

Add at the end the following :—

' and by social usage has access to Hindu temples.'

" Sir, I am aware that a similar amendment was disallowed in connexion with a sub-clause to clause 8. Though this condition was never considered necessary in the case of a Commissioner who is a controlling officer, I suggest it is absolutely necessary in the case of a person who is defined as a trustee and who is an executive officer.

(*At this stage the hon. the President took the Chair.*)

He is an executive officer who has personally to see to the performance of the various rites and rituals inside the temple. He has also to supervise the work of servants of different castes inside the temple. I also wish to draw the attention of the Chief Minister to the fact that both the orthodox and the unorthodox Hindus visit the temple for worship, and if one who has no privilege of access into the temple is appointed a trustee it will wound the feelings of the orthodox Hindus who go into the temple for daily worship. I am sure, Sir, such an offence is far from the heart of our Minister who is a Hindu and who possesses respect for orthodox feeling. I therefore trust that in the interests of the peaceful management of the temple my amendment will be accepted."

The hon. the RAJA OF PANAGAL :—" For reasons similar to those advanced in regard to the previous amendment I cannot accept this amendment. The difficulty is in deciding what amounts to having access to the temple. Is it access to *garbhagraham*, is it to *dwajastambam* or is it some other stage ? So, when we say access, it is so vague and so indefinite that it is not possible to accept the amendment."

Rao Bahadur T. NAMBERUMAL CHETTIYAR :—" I will take one instance to point out the difficulty. If an Adi-Dravida is appointed a trustee, and if he insists upon going into the temple, there will be considerable difficulty in the peaceful management of the temple."

The RAJA OF RAMNAD :—" I think the difficulty pointed out by the Minister can be easily overcome. There are already social usages regarding the entry into the temples. Some caste people are admitted up to the *mahamantapam* ; some are admitted up to the *dwajastambam* and some are admitted into the *garbhagraham*. I am not quite certain whether there is anything in the Bill which goes to affect the local usage or custom. If the hon. the Raja of Panagal thinks that there is sufficient safeguard in the Bill, this amendment is unnecessary. Otherwise the amendment should be carefully considered."

Diwan Bahadur Sir T. DESIKA ACHARIYAR :—" I think clause 75 provides sufficient safeguards. It runs as follows :

Save as otherwise expressly provided in or under this Act nothing herein contained shall affect any established usage of a temple or the rights, honours, emoluments and perquisites to which any person may by custom or otherwise be entitled in such temple.

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Clause 44—cont.

" In ordinary practice the non-Brahman trustees in the Srirangam temple do not go to the *madapulli* and certain other castes do not go to the *dwaja-stambam* and certain others do not go to the *garbhagraham*. These are adjusted by social usage."

The amendment was put and lost.

Clause 44 was put and carried and added to the Bill.

Clause 45.

Sub-clause (2).

(Amendment No. 159.)

Rai Bahadur T. M. NARASIMHACHARLU :—" I beg to move—

For the words ' and in making such appointments the Committee shall have due regard to the claims of ' *substitute the words* ' from among '.

I would like that the sub-clause should read as follows :

Non-hereditary trustees shall be appointed by the Committee *from among* the persons belonging to the religious denomination for whose benefit the temple concerned is chiefly maintained.

As it is, the clause says that in making such appointments the Committee shall have

due regard to the claims of such persons .

I submit that this is not enough. They may have due regard, but they are not bound to choose persons from among those belonging to the religious denomination. I therefore submit, Sir, that in the interests of the temple and in the interests of the community and the peaceful working of the religious institutions the non-hereditary trustees should be appointed by the Committee from among persons belonging to the religious denomination. Otherwise, Sir, there is likely to be any amount of trouble in the actual management of these institutions."

The hon. the RAJA OF PANAGAL :—" The clause, as it is, is elastic enough. The words ' due regard to claims of such persons ' does connote the idea that, as far as possible, members should be from the same community. In these circumstances, I do not find it necessary to accept this amendment."

Rai Bahadur T. M. NARASIMHACHARLU :—" I only submit that the wording, although it includes the persons of the same denomination, does not place any objection to choose them. In order to avoid that difficulty at any time I propose this amendment."

The amendment was put and lost.

(Amendment No. 160.)

Mr. R. SRINIVASA AYYANGAR :—" I move—

After the words ' the Committee shall ' *insert the words* ' as far as possible make the selection from among the persons belonging to the religious denomination predominant in the temple concerned and whose benefit it is chiefly maintained and '.

" My object is to avoid injustice to the people concerned. My amendment provides sufficient safeguard as it contains the words ' as far as possible '."

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Clause 45—cont.

The hon. the RAJA OF PANAGAL :—" Sir, this amendment, if accepted, will be the same in effect as the provision already in the Bill. Therefore, I cannot accept it." 11-15 a.m.

The amendment was put and lost.

Clause 45 was put and passed and added to the Bill.

Clause 46.

(Amendment No. 161.)

Mr. M. SURYANARAYANA :—" Sir, I beg to move—

Omit the word ' lawful '.

No purpose will be served by having this word ' lawful ' in this clause. For, when an order is not lawful, the trustee of the temple is not allowed to contest its legality. I know that there is clause 47 which says that an appeal is allowed to the Board in certain cases. But that appeal relates to an appeal against an order of dismissal, removal or suspension consequent on the wilful disobedience of the lawful orders issued under the provisions of the Bill. So the whole question turns upon this : Supposing an order is communicated to the trustee by the committee, and the trustee feels that the order is wrong. Still he dare not disobey the order ; for, if he disobeys it, under clause 47 (*b*), he may be dismissed, removed or suspended. If he is dismissed, removed or suspended, no doubt, he can appeal ; but supposing in appeal, the committee thinks the order is right, where is the go ? Therefore, the trustee is bound in the first instance to obey orders and there is no appeal against that order. We find that in Schedule II appended to the Bill, clause 46 is not included in those clauses in respect of which an appeal is allowed either to the committee or to the Board or to the court. I should, therefore, think that practically the effect of the order will be a lawful order and there is no meaning in saying ' lawful orders '."

Rao Bahadur C. VENKATARANGA REDDI :—" Sir, I too think that all orders issued under this Bill are presumed to be lawful. That being so, I do not see any reason why this word ' lawful ' should be introduced here. It is out of place."

The hon. the RAJA OF PANAGAL :—" Sir, I accept the amendment."

The amendment was put and carried.

Clause 46 as amended was put and passed and added to the Bill.

Clause 47.

Sub-clause (1).

(Amendment No. 162.)

Rai Bahadur T. M. NARASIMHACHARLU :—" Sir, I beg to move—

In item (*d*) *between* ' or ' *and* ' improper ' *insert the words* ' wanton and '.

" Sir, my submission is that unless a thing is done wilfully, there is no necessity for punishment. Any incidental slip or error in dealing with the properties of the temple cannot be punished with dismissal. I, therefore, submit that it is only *wanton and improper* dealing with the properties that

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Clause 47—cont.

should make the trustee liable for removal or dismissal or suspension. It is not every slip or error in dealing with the properties that should be contemplated in this provision. Some margin must be left to the trustee, and if, in discharging his work, he errs, that should not be made a ground for dismissal or removal."

The hon. the RAJA OF PANAGAL :—" Sir, I understand that the adjective ' wanton ' connotes the idea of mischief. I do not know what really my hon. friend means by ' wanton and '. If it means ' mischievous,' it is covered by the word ' improper ' and as such there is no necessity for this addition."

Rai Bahadur T. M. NARASIMHACHARLU :—" I meant deliberately and intentionally dealing with the properties improperly."

The amendment was put and lost.

Sub-clause (3).

(Amendment No. 163.)

Mr. R. SRINIVASA AYYANGAR :—" Mr. President, Sir, I beg to move—

For the word ' Board ' *substitute the word* ' court '.

Sub-clause (3) in the Bill runs as follows :—

A trustee suspended, removed or dismissed under this section may, within three months of the date of the order of suspension, removal or dismissal, appeal to the Board against such order.

" Hon. Members may be aware of the fact that these are all extraordinary orders which subject a man to certain disabilities. Ordinarily speaking, dismissal and suspension carry with them a certain amount of social odium. In cases like these, it is much better that the existing state of things is allowed to continue and the parties are allowed to take the matter to the courts. There is absolutely no reason why the jurisdiction of the ordinary courts should be sought to be taken away. For departing from the normal state of things and for taking away the jurisdiction of the courts, either there should be something wrong somewhere or the people should have lost confidence in courts. Regarding the confidence in courts, I think, people have not lost their confidence in the courts and the judiciary is functioning properly with its qualified men. It is not correct to say that we have lost confidence in courts. I therefore don't see any reason why the courts should be usurped of their power and some other bodies vested with it."

Rai Bahadur T. M. NARASIMHACHARLU :—" Mr. President, after the omission of the word ' lawful ' in section 46, which my hon. friend, Mr. Suryanarayana, moved and the hon. the Minister accepted, this amendment becomes all the more necessary. Any orders may be passed and the trustee is bound to obey them without questioning whether they are lawful or not. I thank my hon. friend, Mr. Suryanarayana, for not attempting to delete the word ' lawful ' in clause 47 (1) (*b*), which says :

For wilful disobedience of *lawful* orders issued by the Board or committee, or its president.

" Thus, under clause 46, he is bound to obey all orders, whether lawful or unlawful, and he is liable to dismissal or suspension only when he disobeys lawful orders. Therefore, the difficulty comes in determining whether an order issued is lawful or unlawful and whether if it is unlawful, it can be disobeyed.

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Clause 47—cont.

Very knotty and difficult questions will arise, which, I think, the Board will not be competent to dispose of or will not possess the necessary experience which a court will possess. I also submit, with due deference to the Board, that it will not command the same amount of confidence as a court in this country does. I therefore submit that in important matters connected with the status of the trustee and the punishments of a trustee, the power must be given to the court and not to the Board."

The hon. the RAJA OF PANAGAL :—" Sir, these are more or less administrative matters. In the case of hereditary trustees, we have given the option to appeal either to the Board or to the court. In the case of non-hereditary trustees, punished by the committees when they fail to discharge their duties properly according to their idea, it is open to the committees to dismiss them and there is an appeal provided for to the Board. In these circumstances, I do not think it necessary to accept the amendment.

" In the course of the debate, the hon. Member, Mr. Srinivasa Ayyangar, asked ' is it that the people have begun to lose their confidence in courts ? ' Far from that. People *have* their faith in courts and it is simply to bring about administrative convenience that the Board has been provided for to look after such things."

MR. R. SRINIVASA AYYANGAR :—" Sir, I am glad to hear from the lips of the hon. the Minister that people have still faith in courts. That is the additional reason why we should try to maintain that confidence in courts by not taking away the existing jurisdiction. The hon. the Minister has stated that it is purely an administrative matter. Even viewing it from the administrative point of view, it is a very serious step that is attempted to be taken and I think that, all things considered, the appeal should be made to the court and not to the Board."

The amendment was put and lost.

(Amendment No. 164.)

MR. M. SURYANARAYANA :—" Mr. President, Sir, I beg to move—

Omit the proviso.

It does not appear to me necessary that a hereditary trustee should be in a more advantageous position than the ordinary trustee. For, after all, the House will observe that under clause 43—

> the provisions of this chapter shall not apply to excepted temples or the trustees thereof.

It applies only to trustees of ordinary temples. It does not matter whether they are hereditary trustees or ordinary trustees. There is absolutely no reason why in the case of the hereditary trustee the appeal should lie to the court instead of to the Board. I therefore submit that this proviso should be deleted."

Rai Bahadur T. M. NARASIMHACHARLU :—" Sir, I oppose this amendment.

11-30 a.m. I gave notice of a similar amendment when in the previous clause I proposed ' court ' for ' Board ', my object being to invest the court with jurisdiction over all kinds of trustees, both hereditary and non-hereditary, and I do not now, after my amendment is lost, like to take away this privilege which is given to the hereditary trustee."

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Clause 47—cont.

The hon. the RAJA OF PANAGAL :—" I am glad, Sir, that my hon. friend from Cuddapah has opposed this motion. I am going to oppose it too. My reason is that the case of a hereditary trustee is different from that of an ordinary trustee. In the case of a hereditary trustee the right is more valuable than personal appointment. Hence a further safeguard is provided for."

The motion was by leave withdrawn.

Clause 47 was put and passed and added to the Bill.

Clause 48.

Clause 48 was put and passed and added to the Bill.

Clause 49

Sub-clause (1)

(Amendment No. 165.)

Rao Bahadur T. NAMBERUMAL CHETTIYAR :—" Sir, I beg to move—

Add the following as a proviso :—

' Provided the proposed *dittams*, allotments or proportions are not less than those already existing and in actual usage and practice '.

" Sir, here is an amendment to be moved by Mr. Gopalaswami Ayyangar, and that is the very same thing as the one I have tabled. As that is going to be passed I withdraw mine."

The motion was not made and was therefore deemed to have been withdrawn.

Sub-clause (3)

(Amendment No. 166.)

Rai Bahadur T. M. NARASIMHACHARLU :—" I beg to move—

Add at the end the following :—

' In accordance with the usage of the temple.'

Sir, it will be seen that this clause deals with the fixing of a standard scale of expenditure in places of religious worship. Sub-clause (3) says :

After the expiry of the period fixed under sub-section 2, the committee shall consider the objections or suggestions that may have been received and may pass such orders as it thinks fit on the proposals.

" I submit, Sir, that instead of leaving to the committee the absolute discretion to pass such orders as it thinks fit, its powers must be limited by the usage of the particular temple. I realize that clause 75 may be quoted against me. I submit that instead of leaving the matter to a general section, which is somewhat vague in my opinion, it is better that on this important question of *dittams* and other scales of expenditure, the discretion of the committee shall not be absolute but shall be limited by the usage of the particular temple."

The hon. the RAJA OF PANAGAL :—" Mr. President, I am glad that my hon. friend from Cuddapah was himself conscious of the probable argument that would be raised against his amendment. It is a fact that clause 75 of the Bill provides for usages being respected. Hence it is unnecessary to make a further provision at this stage."

Clause 49—cont.

Rai Bahadur T. M. NARASIMHACHARLU :—" As there is no substantial difference between me and my hon. friend the Minister, I do not press this amendment."

The motion was by leave withdrawn.

New sub-clause after sub-clause (5).

(Amendment No. 167.)

Rao Bahadur T. BALAJI RAO NAYUDU :—" Sir, I beg to move—

Add the following as sub-clause (6) :—

'(6) The committee shall on payment of prescribed fees furnish to any person having interest certified copies of the *dittams* etc., as finally settled under this section.'

Sir, I do not think there will be any objection to this new clause, and I trust that it will be accepted by the hon. the Minister."

The hon. the RAJA OF PANAGAL :—" Sir, the amendment as it is worded is vague and indefinite. Nobody can say what '*et cætera*' is going to include. We do not know where it will land us. So, I do not think, Sir, I can accept this."

The motion was by leave withdrawn.

(Amendment No. 168.)

Rai Bahadur N. GOPALASWAMI AYYANGAR :—" Mr. President, Sir, in order to give effect to the idea underlying the amendment moved by my hon. friend, the Raja of Ramnad, and also to give effect to the idea of Mr. Namberumal Chettiyar, I move the following amendment :—

Insert the following as sub-clause (6) *of clause* 49 :—

'(6) The *dittam* or scale of expenditure for the time being in force in a temple shall not be altered by the trustee except in accordance with the procedure laid down in this section.'."

Rao Bahadur C. V. S. NARASIMHA RAJU :—" Sir, I feel some doubt as to the words 'for the time being.' I think the provisions should not be altered except in accordance with the procedure laid down. If that is the intention, I am sure the words 'for the time being' will give a lot of trouble, as we go on. It is not provided according to the registered *dittam* or scale of expenditure. Therefore, in course of time, if these words are allowed to be there, they will give rise to a lot of trouble on the question of fact whether the *dittam* then in force was in force at the commencement of the Act or was introduced subsequently; and even then I believe the trustee will be entitled to contest any dispute on the ground that it was in force at a certain time."

Rai Bahadur N. GOPALASWAMI AYYANGAR :—" Mr. President, the amendment that I have just moved covers both the alternatives which were referred to by my hon. friend, Mr. Raju. It applies not merely to the *dittam* in force at the commencement of the Act, but also to the *dittam* that might be in force on a future occasion. Sub-clause (1) of clause 49 provides for a change of *dittam* from time to time. The trustee is required to submit proposals, and he should not by himself alter the *dittam* without conforming to the procedure laid down in this section."

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Clause 49—cont.

The motion was put to the House and carried and the insertion was made.

Clause 49 as amended was put and passed and added to the Bill.

Clause 50.

Sub-clause (1).

(Amendment No. 169.)

Rai Bahadur T. M. NARASIMHACHARLU :—" Sir, I beg to move—

For the words 'as the board may require' *substitute the words* 'as may be prescribed.'

Sir, it will be seen that sub-clause (1) deals with the form and subject matter of the budgets of temples. I submit this is a very important matter, and there must be uniformity and impartiality in the form and subject matter of these budgets. My proposal is that rules may be prescribed by Government which may aim not only at uniformity but also at impartiality, and therefore I submit that instead of leaving the matter to the discretion of the Board which may prescribe one form here and another form there, the words 'as may be prescribed' may be substituted for the words 'as the Board may require.'"

The hon. the RAJA OF PANAGAL :—" Mr. President, I am afraid the amendment, if accepted, will impose upon the Government the task of framing rules to prescribe the procedure. This is a routine matter and it is expected that the Boards will exercise their discretion properly in a matter like this. They have jurisdiction not over one temple but over all temples, and the uniformity and regularity that is required may be expected from the Board. Under the circumstances, I cannot accept this motion."

Rai Bahadur T. M. NARASIMHACHARLU :—" Sir, I have to differ from the hon. the Minister who has said that it is a small matter. It is a very important matter and I think the forms must be prescribed by the Government and not by the Board."

The motion was put and lost.

New Sub-clause after Sub-clause (4).

(Amendment No. 170.)

11-45 a.m. Rao Bahadur T. BALAJI RAO NAYUDU :—" Sir, I beg to move—

Insert the following as sub-clause (5) *of clause* 50 :—

'(5) The committee shall, on payment of prescribed fees, furnish to any interested person certified copies of the budget of receipts and disbursements approved under this section.'

I am sure, Sir, there is no harm in accepting this amendment."

The hon. the RAJA OF PANAGAL :—" I think it is a harmless amendment and I have no hesitation in accepting it."

The amendment was put and carried.

Clause 50 as amended was then put and passed and added to the Bill.

Clause 51.

Sub-clause (1).

(Amendment No. 171.)

Rai Bahadur T. M. NARASIMHACHARLU :—" Sir, I beg to move—

Omit the words ' the Board is satisfied that '.

If the words are omitted the sub-clause will read :

When, . . . in the interests of the proper administration of the endowments of a temple over which a committee has jurisdiction, a scheme of administration should be settled, the Board may, after consulting in the prescribed manner, the trustee, the committee and the persons having interest, by order settle a scheme of administration for the endowments of such temple.

I submit, Sir, that if the interests of proper administration require it, the Board must take action. I do not see any necessity why the sub-clause should have :

If the Board is satisfied that

and again

the Board may after consulting in the prescribed manner the trustee, etc., settle a scheme.

It seems to be therefore not only redundant but it is giving unnecessary power to the Board. The true position is that the interests of the administration require the scheme and not that the Board is satisfied that a scheme is necessary. The Board may be satisfied when the interests of the administration do not require it. The Board may be satisfied with flimsy reasons. I submit, Sir, that it is the paramount interests of the institution that should be taken into consideration and not the satisfaction of the Board. I therefore move that the words may be omitted. If the interests of the administration require it, the Board may after consulting in the prescribed manner settle the scheme of administration. So, I submit that these words will work a great hardship and are quite unnecessary."

The hon. the RAJA OF PANAGAL :—" Sir, in a case like this the Board is practically the final authority. That being the case, when the matter if at all it goes to the court, the court will question whether the Board was satisfied or not. It is in order to avoid such a contingency that the words are used."

Rai Bahadur T. M. NARASIMHACHARLU :—" I submit, Sir, the court will require to see whether the Board was satisfied or not. By the fact that the Board after consulting in the prescribed manner orders the settlement of a scheme, the court will see that the Board was satisfied about it. I do not see why there should be these words at the beginning of the clause."

The amendment was put and lost.

(Amendment No. 172.)

Mr. B. MUNISWAMI NAYUDU :—" Sir, I move the amendment that reads :

Omit the words ' over which a committee has jurisdiction '.

My reasons are that the Board as the clauses now stand can only frame schemes in cases where a committee exists over a temple. The Bill provides that the Local Government shall appoint committees for any temple or temples or classes of temples. If the Local Government does not appoint any committee then the Board cannot interfere according to the provision as it

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Clause 51—cont.

now stands. Under clause 14, the Board is given powers of general superintendence over all religious endowments and clause 31 gives the committee similar powers over temples. So that, even if no committee has been appointed for a particular temple it may be competent to the Board to interfere when it is satisfied that a scheme is necessary. Hence it is that I move for the omission of the words so that the Board may have power to frame schemes not only with regard to temples over which there are committees but also over other temples."

The hon. the RAJA OF PANAGAL:—"I quite see the force of the point raised by my hon. friend from Chittoor. There is a great deal of force in the argument and I have no hesitation in accepting the amendment.".

The amendment was put and carried.

(Amendment No. 173.)

Mr. B. MUNISWAMI NAYUDU:—"Sir, I move the following amendment:—

Insert the words 'if any' *after the words*, 'the trustee, the committee'. This is only a consequential amendment, Sir, and I hope it will be accepted."

The hon. the RAJA OF PANAGAL:—"Yes, Sir, it is a consequential amendment and I accept it."

The amendment was put and carried.

Sub-clause (2).

(Amendment No. 174.)

Diwan Bahadur L. A. GOVINDARAGHAVA AYYAR:—"Sir, my amendment is that so much of the proviso to sub-clause (2) of clause 51 as gives finality to the orders of the court shall be deleted. The amendment is in the following words:

> *In the proviso omit the words* 'and the scheme altered in accordance with the order of the court on such application shall be final and binding on the parties concerned'.

My reason for moving this amendment is this. Sometimes hon. Members will notice the scheme as settled, whether it is by the Board or the court on appeal from the Board's decision, may involve important questions of law. And it is desirable that an appeal from the decision of the court to the higher court should not be taken away specifically by any legislation that we may be responsible for. Of course, where there is a decision by the Board and there is an appeal to the court from the decision of the Board it is only in important cases that there will be another appeal from the decision of the court to a higher court. The importance of these cases does certainly justify the advisability of an appeal being allowed. My original idea was that so far as the settlement of schemes went, it must be a matter entirely left to the court for, I was of opinion that it was the courts that were best constituted to settle schemes and not the Board as we constitute it at present. But I did not propose any amendment to that effect because I knew that the feeling of this House, particularly of the party in power, could not be expected to be on my side after the treatment we had

Clause 51—cont.

so far received regarding those clauses of the Bill which related to the substitution of the court for the functions of the Board. So, I did not want to press that. But because I saw that in this case, the taking away of the powers of appeal to a higher court from the court to which an appeal might lie from the decision of the Board was one which was likely to be fraught with considerable mischief and great disadvantage to parties and the institution concerned, I felt myself constrained to move this amendment and I hope the House will accept it."

Rai Bahadur N. GOPALASWAMI AYYANGAR :—" Mr. President, the policy of this Bill is that there should be a distinction between the procedure that should be followed in the case of schemes which are framed for non-excepted temples and the procedure that should be followed in the framing of schemes for excepted temples and *maths*. This policy has been given effect to in clauses 51 and 61 respectively. The non-excepted temples are practically under the complete domination of the committees concerned. It was thought that it would in their case suffice to give the power of framing a scheme fairly finally to the Board only allowing persons interested to move the court for an alteration or modification of such a scheme. The question as to whether the procedure for both the classes of institutions should not be the same was discussed in the Select Committee and this is the conclusion that was arrived at. The fact that the Bill does make a distinction as regards the kind of control that should be exercised over these two classes of temples—and the distinction is certainly founded on some justification—stands in the way of accepting the amendment."

Diwan Bahadur L. A. GOVINDARAGHAVA AYYAR :—" Sir, I am glad that the hon. Member Mr. Gopalaswami Ayyangar, has opposed this amendment, because by the speech in which he supported his position he has shown how feeble the position that he has chosen to take up is. I say this with confidence, Sir, for reasons which I shall presently mention. According to my hon. friend, the reason why no appeal is to be provided in this case is that there is something very peculiar about the temples under the jurisdiction of committees which puts them into a separate category from what are called the excepted temples. Let us examine that provision for a single minute. Where do the excepted temples differ from the temples coming under the jurisdiction of the committee ? In the case of the excepted temples, they are temples whose trustees were hereditary before 1801 and in or after 1863 ; except in that particular there is no difference between the excepted temples and non-excepted temples such as will come under the jurisdiction of the committee. A scheme, we may take it, except in very important cases of a most flagrant and repeated mismanagement on the part of the trustees will certainly not interfere with the succession to the trusteeship whether in the case of the excepted or non-excepted temples. The scheme will generally concern itself with the method of management and the way in which the funds of the institution have to be utilized and with the general administration of the endowment. There is absolutely no difference between the cases of excepted and non-excepted temples in these matters. If excepted temples are good enough to allow of an appeal being taken from the decision of one court to a higher court the very same considerations will justify—not merely justify but necessitate—the powers of appeal being given in the case of the non-excepted

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Clause 51—cont.

temples also. If these are the only reasons that the Government have to oppose the amendment, I think the House will show that it is wise if it accepts the amendment."

The hon. the RAJA OF PANAGAL :—"The main reason why we have not given the right of appeal in all cases is to minimize litigation as far as possible. There has been a great deal of waste by way of litigation in the management of these temples and the distinction that my hon. friend opposite wants or seeks to make out does not really exist at all. In these circumstances, I do not think the acceptance of the amendment will serve any good purpose."

The amendment was put and lost.

12 noon. Diwan Bahadur L. A. Govindaraghava Ayyar then demanded a poll, which was accordingly taken with the following result :—

Ayes.

1. Diwan Bahadur M. Ramachandra Rao Pantulu.
2. ,, L. A. Govindaraghava Ayyar.
3. Rao Bahadur A. S. Krishna Rao Pantulu.
4. Mr. M. Suryanarayana.
5. Rai Bahadur T. M. Narasimhachariu.
6. Mr. R. Srinivasa Ayyangar.
7. ,, A. Ranganatha Mudaliyar.
8. Rao Bahadur T. Namberumal Chettiyar.

Noes.

1. The hon. the Raja of Panagal.
2. ,, Mr. C. P. Ramaswami Ayyar.
3. Mr. E. S. Lloyd.
4. ,, A. Y. G. Campbell.
5. Rai Bahadur N. Gopalaswami Ayyangar.
6. Mr. C. Madhavan Nayar.
7. Diwan Bahadur T. N. Sivagnanam Pillai.
8. Mr. E. Periyanayagam.
9. Rao Sahib T. C. Tangavelu Pillai.
10. Mr. A. Ramaswami Mudaliyar.
11. Rao Bahadur P. C. Ethirajulu Nayudu.
12. ,, T. Balaji Rao Nayudu.
13. Mr. W. Vijayaraghava Mudaliyar.
14. ,, J. Kuppuswami.
15. Mr. B. Munuswami Nayudu.
16. ,, A. T. Muthukumaraswami Chettiyar.
17. Rao Bahadur C. Natesa Mudaliyar.
18. Mr. V. P. Pakkiriswami Pillai.
19. ,, P. T. Rajan.
20. ,, K. Sarabha Reddi.
21. ,, W. P. A. Saundarapandiya Nadar.
22. ,, R. K. Shanmukham Chettiyar.
23. ,, S. Somasundaram Pillai.
24. Rao Bahadur C. Venkataranga Reddi.
25. Mr. S. Muthumanikkachari.
26. ,, A. T. Palmer.
27. Rao Sahib P. Venkatarangayya.

Eight voted *for* and 27 voted *against*. The motion was lost.

(Amendment No. 175.)

Mr. C. MADHAVAN NAYAR (Advocate-General) :—"Sir, before we go on with sub-clause (3), may I move two amendments to sub-clause (2), which stand in my name ?—

In sub-clause (2), *between the words* 'sub-section (1) shall' *and* 'be final,' *insert the words* 'subject to the provisions of sub-section (3)'.

Mr. President, the object of my moving this amendment is to avoid a possible misapprehension. You will see, Sir, that according to clause 51 (1), the Board has got the power to settle a scheme, and the proviso to sub-clause (2) says that the order of the court settling a scheme shall be final. If my amendment is accepted, sub-clause (2) will read :

The order of the Board settling a scheme under sub-section (1) shall, subject to the provisions of sub-section (3), be final . . . etc.

Clause 51—cont.

Now, according to sub-section (3) the Board has got the power to modify or cancel a scheme made according to sub-clause (1). So, I want to insert this and the succeeding amendments to show that the Board still retains in its hands the power to modify or cancel the schemes settled according to sub-clause (1).

"I also move the following amendment in the proviso:

175. *In the proviso, between the words* 'application shall' *and* 'be final,' *insert the words* 'subject to the provisions of sub-section (3).'

This amendment also is for the purpose of making it clear that the Board may modify or cancel an arrangement which has been altered by the court according to the proviso."

Mr. C. V. VENKATARAMANA AYYANGAR:—"Sir, I have given notice of an amendment, which may modify the amendment now moved by the hon. the Advocate-General. May I go on with it?"

The hon. the PRESIDENT:—"The hon. Member cannot do it. The House can deal only with one amendment at a time."

Mr. C. V. VENKATARAMANA AYYANGAR:—"It would modify the amendment that has been moved, as my amendment to sub-clause (3) also comes under this."

The hon. the PRESIDENT:—"Order, order. The House is now dealing with sub-clause (2), and the motion given notice of by the Advocate-General is to insert between the words 'sub-section (1) shall' and 'be final' the words 'subject to the provisions of sub-section (3)'; and also in the proviso to insert between the words 'application shall' and 'be final' the words 'subject to the provisions of sub-section (3)'. The hon. Member can either oppose that motion or support it, or move an amendment to that motion. But he cannot do anything else."

Mr. C. V. VENKATARAMANA AYYANGAR:—"For the present I shall oppose it, Sir. But I may say that my object is this. If a scheme is first settled by the Board and then taken to the court, and the court modifies that scheme, I submit that the Board should not have the right of changing it again. I think it is desirable that when a scheme is modified by the court, the Board should not have the power of modifying or cancelling that decision. Anyhow, I think the better thing will be to suggest, as mentioned in my amendment No. 390, that the word '*settled*' be substituted for the word 'altered'. It is only a formal amendment, intended to provide for the contingency of a court not altering a scheme at all. It may be that a scheme goes to the court and the court may not alter it at all but only confirm what was settled by the Board. Therefore, the word should be 'settled', because the existing word 'altered' would imply an alteration only, which may or may not occur. The word 'settled' would apply in all cases, whether there is alteration or confirmation."

Mr. C. MADHAVAN NAYAR (Advocate-General):—"Sir, the scheme of the section is that the Board shall settle a scheme and that the court may alter it. It is therefore difficult to accept the amendment proposed."

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Clause 51—cont.

The hon. the PRESIDENT :—" He has not moved the amendment. He has only thrown out a suggestion for the consideration of the Government."

The motion of the Advocate-General was then put to the House and carried.

Sub-clause (3).

(Amendment No. 176.)

Mr. C. V. VENKATARAMANA AYYANGAR :—" Sir, I beg to move—

After the words 'settled under' *insert the words* 'sub-section (1) of'.

Amendments No. 391 and No. 395 on the agenda go together."

The hon. the PRESIDENT :—" What does the hon. Member mean by saying that they go together ? "

Mr. C. V. VENKATARAMANA AYYANGAR :—" What I meant was that it would be better if both the amendments were taken together because —"

The hon. the PRESIDENT :—" It cannot be done."

Mr. C. V. VENKATARAMANA AYYANGAR :—" Well, Sir, No. 395 will come after amendment No. 391 is passed. What I say is this. Supposing that a Board frames a scheme, and between the trustee and the Board there is a dispute, sub-clause 2 says that the matter may be taken to the court, and the court shall then go into the whole question and modify or alter that scheme. Then, after the matter has been taken to the court and after the court modifies or alters a scheme and the scheme becomes final, sub-clause 3 gives power to the Board to alter it the next moment. I want that at least so far as the Board is concerned, there should be finality to the decisions of the court. It may be asked 'what becomes of the schemes provided for by the court ?' It is therefore that I suggest that such schemes may afterwards be changed by the court itself. To make it clear, all that I say is that when there is a dispute between a trustee and the Board and the matter goes to the court and the court disposes of it, the Board should not have the power to change the court's order the next moment. The sub-clause reads :

A scheme settled under this section may at any time be modified or cancelled by the Board in the manner provided in sub-section (1) for the settlement of the original scheme.

Scheme settled means settled by the court or by the Board. After the matter goes to the court, the Board may cancel or modify the court's order at any time. Therefore, what the Board would do is to fight out the matter in the court, honestly believe that the court is wrong in its decision and that it is right, and it can at any time, even the next moment, say that the court's scheme has been altered and that its original scheme has been reinstated. That will be the effect of the sub-clause as it is. It gives power to the Board to change the scheme even after it has been disposed of by the court without any notice or anything. I won't attribute motives to the Board. The members of the Board may honestly believe that the court was wrong and that they themselves are correct, and they will honestly think 'We have power under sub-section 3 to change the scheme even after so much struggle and arguments. Therefore we shall alter it.' And then we shall have again to go to the court, and the Board may again change the scheme. Therefore I suggest that when once the matter is fought out in the court, the Board should not have the right to change the scheme, but only the court."

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Clause 51—cont.

12-15 p.m.

The hon. the RAJA OF PANAGAL :—" Sir, the difficulty which my hon. friend wishes to point out does not really exist, unless the Board happens to be a very cantankerous one intent upon defeating the object of the court in revising the scheme. Apart from this, under sub-clause (2) and the proviso, it would be impossible for the Board to maintain their own position if they acted perversely. The Board will have again to go before the court and hence it would not dare to take up that attitude. Therefore, I think the difficulty that my hon. friend is contemplating is not likely to arise at all. The real object of this sub-clause (3) is to give power to the Board to modify a scheme which has been framed by the court if the Board considers that, in the altered circumstances, such a modification is necessary. Unless the Board is given such power, schemes once framed will have to remain for ever. In these circumstances, I think that sub-clause (3) is quite necessary."

Diwan Bahadur L. A. GOVINDARAGHAVA AYYAR :—" Sir, I have given notice of an amendment with a similar import and as I am afraid that you, Sir, might rule me out when my turn comes for moving my amendment, I beg to intervene at this stage in the debate and say a few words on the amendment before the House. In the first place, Sir, let us understand the facts before we make up our minds as to whether the amendment in question should be accepted or not. We have found that in the case of temples, which are under the jurisdiction of Committees, certain schemes are framed by the court. Under the provisions of the present Bill, power is given to the Board to modify the schemes settled by courts in respect of particular temples under the jurisdiction of Committees. Then the question arises whether this modification should be made with the consent of the court which framed the original scheme or without its consent. As the language of clause 51 stands at present, the court can come in only by way of being asked to exercise appellate jurisdiction over any order that the Board may make. Until then its jurisdiction does not at all come in ; so that the position is that although a scheme has been settled by the court, if the Board wants to modify the scheme, it can do so independently and without any reference to the court.

" It was stated by the hon. Minister that no Board would be cantankerous enough to lightly interfere with the schemes settled by courts. But I may assure the hon. Minister that the test that has to be applied in legislating is not merely to see whether the Board will be cantankerous or not but also to assume. . ."

The hon. the RAJA OF PANAGAL :—" Sir, my statement was not an absolute statement; it was conditional. I said that seeing that there was again a reference to the court, no Board would interfere lightly in the schemes settled by the court."

Diwan Bahadur L. A. GOVINDARAGHAVA AYYAR :—" Sir, I quite realize the modification that the hon. Minister wants to propose. But even with the modification the position I take stands and it is this. In legislating we have to take it that there may be some bodies which may not apply the powers in the spirit in which these powers have been given to them, but that they may look to the letter and even go against the spirit if the letter enables them to do so. That is the point of view which legislators have to keep in view

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Clause 51—cont.

before they enact particular provisions of law. Applying that to the present case, it is a well-understood principle that it is not the reasonably interpreting man that you have to keep in view, but a man who is perverse."

The hon. the RAJA OF PANAGAL :—" I do not expect the commissioners to be perverse."

Diwan Bahadur L. A. GOVINDARAGHAVA AYYAR :—" Our expectations are often unfounded or they are not fulfilled. I do not think that even as regards the best institutions, provided that they are human, we can predicate that the best will happen."

The hon. the RAJA OF PANAGAL :—" Even if the commissioners are perverse, there is the safeguard in the proviso which requires the scheme as modified to go before the court once again for confirmation."

Diwan Bahadur L. A. GOVINDARAGHAVA AYYAR :—" Even with my hon. friend's Board it is permissible to suppose that there may be persons who perfectly honestly may still take perverse views. We have to keep in mind not so much the possibility of what a man may or may not do as what exactly the powers are that he is to be invested with.

" The other argument that has been advanced is this. The matter will again go before the court either because there is a person interested who chooses to go to the court or because the trustee feels aggrieved and wants to go to the court. It is only in either of the above two cases that the matter will be taken up before the court. What will happen if the trustee thinks that the particular modification of the scheme will benefit him rather than be prejudicial to him or again if no person is forthcoming to spend the necessary money and take the matter to the court? So that my object is that whenever a Board wants to interfere with a scheme which has already been settled by the court, it must be made obligatory upon the Board to go to the court and explain the circumstances under which they think a modification is necessary and have the modification ratified by the court. By making such a provision the Board does not really lose anything.

" Even according to the hon. the Minister the matter is liable to go to the court in the first instance. If the court exercises this power and settles a scheme, the presumption is that the scheme is *prima facie* good. If in the altered circumstances due to time or on account of the imperfections of the original scheme it is considered that modification is necessary, I think it is ordinary courtesy even to the court to get the Board apply to the court so that the court may be in a position to realize what exactly the mistake is that it has committed or what exactly the modifications are that are needed in the light of the further development of the particular institution that is affected by the scheme. Even according to my hon. friend's own statement nothing is lost by the acceptance of this amendment, but something may be lost by its rejection."

Mr. C. V. VENKATARAMANA AYYANGAR :—" Sir, I am always an optimist, but I am surprised at the optimism of the hon. the Minister that the commissioners will ever be perfect. I suppose the hon. the Minister meant by 'my commissioners', the commissioners that would be appointed by his successors also. We have to make provisions in the Bill not to safeguard the interests that may arise to-day or to-morrow but also to anticipate the

Clause 51—cont.

difficulties that may crop up at a future date. We have often heard that even High Court Judges commit errors, and in certain cases we have seen that they give a sentence of hanging to a man who ought not to have been so sentenced. The Privy Council had held in a large number of cases that the sentences of the High Court Judges were wrong and that they had acted perversely in coming to particular decisions. Many of my hon. friends are also aware of the provision in the Criminal Procedure Code which requires that even if the highest officer of the police conducts a search in anybody's house, he should have by his side two neighbours in whose presence he should conduct his search. Do not all these safeguards go to show that human nature is imperfect always? It may be that the members of the Board may or may not be perfect, but all that I wish to say is that there must be some safeguard against the contingency of their acting perversely. The commissioners may be presumptuous as many of us are. They may think that the decision they have arrived at is the correct one and that the court's decision is wrong. If the power to modify the scheme without reference to the court is retained for the Board, the commissioners may take it into their head to modify the scheme the moment it is settled by the court. There is absolutely no safeguard provided in the Bill against such a contingency. It has been proclaimed over and over again that the object of the Bill is to put an end to litigation. Is this the way of putting an end to litigation? We must make the Board take the sanction of the court before the scheme is modified by them. We must not leave it to the chance of a private party or the trustee going to the court for the purpose of contesting the modifications introduced by the Board. The trustee may have become a pauper and he may not care to go to the court, or there may be a change in the court. All that I wish to say is that the Board should take the consent of the court before it modifies the scheme. Otherwise, the Board may modify the scheme the next moment after it is settled by the court. It is only to guard against such a contingency that I have given notice of my amendment. I have no objection to my hon. friend Mr. Govindaraghava Ayyar's amendment being accepted, nor have I any objection to another amendment being proposed by the Government. All that I want is that the court should have the final word in the matter of settling schemes without the party again going to it. This provision will avoid unnecessary litigation. I do not see any harm in the court being made the final authority in this matter. We know in law of what is known as *res judicata*. Let not this rule of *res judicata* be made to apply with regard to the schemes settled by the courts. If the Board thinks that after the scheme is once settled by the court, it requires some modification, let provision be made for the Board applying to the court and for having the modifications ratified by the court. I thought that my amendment was so simple that the hon. Minister would readily accept it. The difficulty raised by the hon. Minister may be overcome by accepting amendment No. 394. I hope that the hon. Minister will reconsider the matter and make some adequate provision to avoid the contingency of the Board making some modifications in the scheme the next moment after it is settled by the court."

The hon. the RAJA OF PANAGAL:—"Sir, I have taken some pains to follow the arguments of my hon. friends opposite. My hon. friend, Mr. Govindaraghava Ayyar, in trying to make out a case for the acceptance of his amendment has premised the case of reasonable men being perverse.

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Clause 51—cont.

Sir, I have yet to come across a case of that sort. In legislating, we cannot anticipate such cases and make adequate provision for them."

Diwan Bahadur L. A. GOVINDARAGHAVA AYYAR :—" I do not think I said that a reasonable man when he was reasonable would be perverse."

The hon. the RAJA OF PANAGAL :—" He will be perverse at the time when he is perverse : so that the argument loses its force. My hon. friend, Mr. Venkataramana Ayyangar, said that even High Court Judges sometimes erred in their judgment. After all human nature being what it is any legislation cannot be perfect. We must only try to make it as perfect as possible. Neither of my hon. friends have answered my criticism, that if in case the Board cannot interfere in schemes already settled by the court, the difficulty would arise when a change is found necessary in the interests of the institution."

Mr. C. V. VENKATARAMANA AYYANGAR :—" Sir, I have already pointed out that the difficulty mentioned by the hon. Minister can be overcome by the acceptance of amendment No. 394 which empowers the Board to go to the court and seek its sanction before giving effect to the modifications."

Diwan Bahadur L. A. GOVINDARAGHAVA AYYAR :—" I may mention that my amendment provides for the overcoming of this difficulty also."

The hon. the RAJA OF PANAGAL :—" Under the proposed proviso to sub-clause 2 the Board has to go to court once for permission to interfere with a scheme. Then there is the necessity for going to court again to have the modifications ratified by it. This means a multiplication of resort to courts which is obviously against the object of this Bill."

12-30 p.m.

Diwan Bahadur M. RAMACHANDRA RAO PANTULU :—" I want to say just a word, Sir. I would like to ask my hon. friend the Advocate-General what the scheme of the present clause is. I understood my hon. friend to say with reference to a previous amendment that the scheme of the clause was that the Board should frame the scheme and that the final settlement of it, whether at the instance of the trustee or of some other party, should be left in the hands of the court."

Mr. C. MADHAVAN NAYAR (Advocate-General) :—" I did not say that, Mr. President."

Diwan Bahadur M. RAMACHANDRA RAO PANTULU :—" Yes, the hon. Member said so. The present contention is that if there is to be any amendment at a later stage by the Board, it must certainly receive the assent of the court as in the case of the original scheme. Many arguments have been advanced as regards persons being perverse or reasonable, but I think what my hon. friend has to consider is what is the scheme of the Bill in regard to the functions of the Board and in regard to the functions of the court in relation to the Board. Judging it by that test, I should think, Sir, that the court should have the power such as that suggested by both of my hon. friends who have preceded me."

The hon. the RAJA OF PANAGAL :—" The scheme of the clause, Sir, is that in ordinary circumstances it is for the Board to frame a scheme, and if the party concerned is not satisfied with that scheme, it is open to him to go to court against that scheme. If the Board frames a scheme a second time, that alternative is still open to the party concerned."

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Clause 51—cont.

The amendment was then put and declared lost. On the motion of Mr. C. V. Venkataramana Ayyangar a poll was taken and the House divided as follows:—

Ayes.

1. Diwan Bahadur M. Ramachandra Rao.
2. ,, L. A. Govindaraghava Ayyar.
3. Rao Bahadur A. S. Krishna Rao.
4. ,, C. V. S. Narasimha Raju.
5. Mr. C. V. Venkataramana Ayyangar.
6. Mr. M. Suryanarayana.
7. Rai Bahadur T. M. Narasimhacharlu.
8. Mr. R. Srinivasa Ayyangar.
9. ,, M. R. Seturatnam Ayyar.
10. ,, T. Sivasankaram Pillai.
11. Rao Bahadur T. Namberumal Chettiyar.

Noes.

1. The hon. Khan Bahadur Sir Muhammad Habib-ul-lah Sahib.
2. The hon. the Raja of Panagal.
3. ,, Rai Bahadur K. Venkata Reddi Nayudu.
4. ,, Rao Bahadur A. P. Patro.
5. Mr. E. S. Lloyd.
6. ,, A. Y. G. Campbell.
7. Rai Bahadur N. Gopalaswami Ayyangar.
8. Mr. C. Madhavan Nayar.
9. Diwan Bahadur T. N. Sivagnanam Pillai.
10. Mr. E. Periyanayagam.
11. Rao Sahib T. C. Tangavelu Pillai.
12. Mr. A. Ramaswami Mudaliyar.
13. Rao Bahadur P. C. Ethirajulu Nayudu.
14. ,, T. Balaji Rao Nayudu.
15. ,, O. Tanikachala Chettiyar.
16. Mr. W. Vijayaraghava Mudaliyar.
17. ,, J. Kuppuswami.
18. Mr. B. Muniswami Nayudu.
19. ,, A. T. Muttukumaraswami Chettiyar.
20. Rao Bahadur C. Natesa Mudaliyar.
21. Mr. V. P. Pakkiriswami Pillai.
22. ,, P. T. Rajan.
23. ,, K. Sarabha Reddi.
24. ,, W. P. A. Saundara Pandiya Nadar.
25. ,, R. K. Shanmukham Chettiyar.
26. ,, T. Somasundara Mudaliyar.
27. ,, S. Somasundaram Pillai.
28. ,, P. Subbarayan.
29. ,, C. Venkataranga Reddi.
30. ,, S. Muttumanikkachari.
31. Diwan Bahadur Sir T. Desika Achariyar.
32. The Raja of Ramnad.
33. Khan Bahadur Muhammad Usman Sahib Bahadur.
34. Rao Sahib P. Venkatarangayya.

Eleven voted *for* and 34 *against*. The motion was lost.

(Amendment No. 177.)

Mr. C. Madhavan Nayar (Advocate-General):—"Mr. President, in sub-clause (3) I suggest the following two alterations:—

(*a*) *Between the words* 'settled' *and* 'under this section' *insert the words* 'or altered'.

(*b*) *After the words* 'under this section' *insert the words* 'or a scheme which, under section 71, is deemed to be a scheme settled under this Act'.

Sir, this amendment is only intended to make the meaning of the various clauses clear, and in order to show that the Board has power to deal with all these three cases of schemes: schemes settled, schemes altered, or schemes which are deemed to be settled under this Bill."

Mr. C. V. Venkatabamana Ayyangar:—"Sir, I oppose this motion which comes to this: that even in the case of a scheme which has gone up to the Privy Council—as in the case of the scheme regarding the Tirupati temple—and which has been finally decided by the Privy Council after the various questions of interpretation and other things had been adjudicated upon, the Board by one stroke of the pen, or by a majority of three against two, or even by the casting vote of the President, can cancel it. If that is the object of this provision, Sir, I would simply oppose it and leave it to the party in power to raise their hands and vote for it."

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Clause 51—cont.

The RAJA OF RAMNAD :—" Sir, I beg to support the amendment moved by the Advocate-General. If, as my hon. friend from Coimbatore said, a scheme has gone up over and over again to the Privy Council, I think for that very reason it ought to be modified, altered, or cancelled by the Board. There is also sufficient safeguard by way of appeal. I am afraid my hon. friend from Coimbatore has really advanced arguments against his own opposition."

Diwan Bahadur L. A. GOVINDARAGHAVA AYYAR :—" Sir, I beg to adopt the argument of Mr. Venkataramana Ayyangar in opposing this amendment, and I beg to supplement it by a few words of mine. Let us take a case where the Privy Council has finally settled a scheme. Now it comes to the notice of the Board that there has been such a scheme settled. The Board for reasons of its own, with no facts before it additional to what the Privy Council had when they settled the scheme, is competent, if this amendment is adopted, to frame a scheme which is opposed to the one which the Privy Council has settled. Then, after the Board has settled that scheme which is inconsistent with the Privy Council scheme, the only way that is open to have this new scheme as settled by the Board changed is by an appeal to the court. The definition of 'court' that we have ultimately adopted is in the mufassal either the district court or any other court which is empowered by the Local Government to try such suits, and it is perfectly conceivable, and even probable, that a munsif's court, or a sub-court, may be given the power to frame schemes, or to exercise the powers given under this Bill when it becomes an Act. So that, the position is this. You have got a scheme of the Privy Council. It is altered by the Board; of course, it might have been done perfectly, honestly, and I have nothing to say about the cantankerousness or anything of that sort of the Board; they might honestly think that a modification is necessary and alter it. When it is altered, an appeal is allowed either to the munsif, or to the sub-judge, who is an infinitely lower authority than the Privy Council, and the decision of this gentleman becomes final under another sub-clause of the same clause. Now, we find, Sir, what exactly the logical conclusions are which are capable of being derived from the provisions of this clause, and particularly by the amendment as suggested by the hon. the Advocate-General. I think this ought to convince the House that it will not be proper to accept the amendment as suggested."

Diwan Bahadur Sir T. DESIKA ACHARIYAR :—" Mr. President, I support the hon. the Advocate-General's amendment. One reason why the Select Committee thought that schemes that have been framed by courts should also be subjected to the jurisdiction of any board or agency appointed under this Bill was that most of these schemes were found in practice to be not working properly; either in the management or in control the schemes were found to be defective. If once it is conceded that 'schemed institutions' should also be brought under the control of the agency created by this Bill, those schemes must be altered, or modified, or cancelled from time to time under the present clause, and there are sufficient safeguards in the clause itself, viz., the proviso to sub-clause (2). Any alteration that is made by the Board goes before a court again, and there is therefore nothing improper or unjust in having a provision like this provided we accept the

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Clause 51—cont.

principle of bringing schemed institutions also within the scope of this Bill. Once we concede that clause 71 is a clause which has been properly engrafted into the schemes of this Bill, we have to amend sub-clause (3) of the present clause as suggested by the hon. the Advocate-General."

Diwan Bahadur P. KESAVA PILLAI :—"Let me have the liberty of speaking a word, Sir, on this Religious Endowments Bill. I am very much moved by the touching reference made to the Privy Council which is composed of no Hindus at all but English gentlemen absolutely ignorant of Hindu usages and Hindu religion. My hon. friends were very anxious to get their judgments and their schemes adopted in regard to the management of our temples. It was rather very touching coming as it did from gentlemen, especially from this side of the House (pointing to the Opposition Benches), who have been very anxious to see that the Hindus who practise Hinduism should have a voice in the matter."

Mr. C. V. VENKATARAMANA AYYANGAR :—"May I say a word of personal explanation, Sir? The hon. the Deputy President has misunderstood what we were saying. We never said anything about schemes being framed by the Privy Council. All that we said was that schemes that had gone up to the Privy Council should be final and the Board should not be given the power of unsettling such schemes which under the clause, as it stands, may be done even by a casting vote of the President. What we said was that the court should have the power in such cases and not the Board."

Diwan Bahadur P. KESAVA PILLAI :—"We should have the approval of gentlemen who are Hindus and not of a court composed of Englishmen in England. That is the point. I support the amendment and oppose Mr. Venkataramana Ayyangar."

Rai Bahadur T. M. NARASIMHACHARLU :—"Mr. President, the hon. the Minister has told us many times that the object of this Bill is to minimize litigation. But what is the hon. the Minister doing now? With reference to schemes that have been framed by district judges after great deliberation, after having the help of . . ."

The hon. the RAJA OF PANAGAL :—"Those schemes, Sir, in 99 out of 100 cases, make provisions for amplifications and for applications for changes."

Rai Bahadur T. M. NARASIMHACHARLU :—"I know that scheme was framed by the district judge or subordinate judge with the evidence and with the aid of the law officers; aid of the afterwards the High Court went through it and lastly the Privy Council settled it finally. Now I ask if finality and prevention of litigation are the aims of this Bill? I wish to know on what principles the schemes that have been settled by the Privy Council are sought to be re-opened by the members of the Board who do not constitute a court. They are administrative officers. Their inquiries are not judicial and, as my hon. friend, Mr. Venkataramana Ayyangar, has put it, those three or four persons may decide, and, by the casting vote of one, may alter it and that in a hasty and in a most unjudicial manner. I submit, Sir, the very object of this Bill being to prevent litigation and not to multiply litigation, that object

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Clause 51—cont.

will be frustrated by bringing into this body schemes which have been once for all settled by the Privy Council.

"The hon. the Minister says that power is reserved to the Board for further direction. I submit that it is quite enough. Instead of seeking to enforce the power when any difficulty arises and thereby removing the doubts or the difficulties when they arise, I do not know why we should make the members of this Board sit in judgment over the schemes settled by the Privy Council and then try to create a sort of circle over and over again. I submit, Sir, for these reasons the amendment of the hon. the Advocate-General cannot at all be accepted."

The hon. the RAJA OF PANAGAL :—"Mr. President, the hon. Members who opposed the amendment of the Advocate-General, tried to appeal to the sentiments of the Members of this House."

Mr. C. V. VENKATARAMANA AYYANGAR :—"Sir, I appealed to reason only."

The hon. the RAJA OF PANAGAL :—"Sir, they did so, particularly by laying stress on the decisions of the Privy Council. Well, Sir, as lawyers they ought to be aware that whenever a new legislation is undertaken, the legislature need not care whether a particular principle has been decided by the Privy Council one way or other. I may quote the instance of 10, Allahabad. There, according to that decision, the holder of an impartible estate can will away, or, make a gift intervivos of, the whole or a part of that estate. Sir, under the recent Impartible and Inalienable Estates Act, the holder of an estate cannot give a couple of *cawnies* of land as a gift to anybody ; and if he does it, even the lowest of courts, if it is a case of small cause, can set aside the gift against the principle laid down by the Privy Council—."

Rai Bahadur T. M. NARASIMHACHARLU :—"There, the legislature intervenes to restore the existing state of things which was revolutionised by the decision of the Privy Council."

The hon. the RAJA OF PANAGAL :—"Here also the attempt is the same. Most of the temples and endowments were at one time State-managed and they had the discretion to manage these institutions as they pleased. Now, according to this scheme, only the State cannot interfere, while according to the scheme settled by the Privy Council nobody can interfere. Therefore, there is every necessity for the amendment being accepted."

The motion was put to the House and carried.

Clause 51 as amended, was put and carried and added to the Bill.

Clause 52.

Sub-clause (1).

(Amendment No. 178.)

Mr. C. V. VENKATARAMANA AYYANGAR :—"Sir, I formally move that—

The words 'office-holders and' *be omitted*

so that we may know whether the Government is going to move its amendment to sub-clause (1) or not. It may be that that amendment may not be moved and if I withdraw my amendment there will be difficulty."

Clause 52—cont.

Rai Bahadur N. GOPALASWAMI AYYANGAR:—"Mr. President, it is intended that the amendment standing against my name should be moved on behalf of the Government."

Mr. C. V. VENKATARAMANA AYYANGAR:—"In view of that fact I only express the hope that the House will accept it and withdraw my amendment."

The amendment was by leave withdrawn.

(Amendment No. 179.)

Rao Bahadur T. NAMBERUMAL CHETTIYAR:—"I beg to move—

Add at the end the following:—

'The power of patronage in regard to these subordinates shall also be exercised by the trustee.'

It seems to me Sir, that a trustee should have this power of patronage if he is expected to enforce discipline among the subordinates. If he is asked to enforce discipline without a corresponding power of patronage it will be impossible for him to do so. I therefore ask for the addition of these words at the end of sub-clause (1)."

The hon. the RAJA OF PANAGAL:—"I am afraid I cannot quite catch what my hon. friend means by power of patronage. If by power of patronage he means the power to make appointment it is a different matter. But if he goes further, I am afraid I cannot accept the amendment."

Rao Bahadur T. NAMBERUMAL CHETTIYAR:—"If a trustee is given the power to appoint he must also be given power in the case of meritorious service to increase the pay or reward otherwise."

The hon. the RAJA OF PANAGAL:—"That he can do under the existing clause."

The amendment was by leave withdrawn.

(Amendment No. 180.)

Diwan Bahadur L. A. GOVINDARAGHAVA AYYAR:—"I beg to move the amendment that stands against my name, viz.—

'Provided that the trustee shall not impose on any office-holder or servant of the temple any form of punishment which according to the existing usages or rules of the institution of which he is trustee he is not entitled to impose.'

"I hope, Sir, that the House will accept this amendment; because, the effect of this amendment is merely to give once again prominence to the principle that underlies this Bill, viz., the principle of not interfering with existing usages. Without this proviso it may be that the provisions of clause 52 may be so interpreted as to vest in the trustee absolute powers of fining, suspending, removing or dismissing the office-holders of the temple even though the exercise of such powers might be inconsistent with the usages of the institutions of which he may be the trustee. It is for the purpose of providing against the possibility of the exercise of powers inconsistent with the usages that govern particular institutions that this has been suggested. It is not, Sir, that my fears are altogether imaginary; because we do find

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Clause 52—cont.

that in some institutions there are instances where there are powers which even the trustee cannot exercise. Only as an illustration and as nothing more than an illustration I would refer to the case of the Pedda-Jiangar who has got very onerous duties in respect of the temples of Tirupathi and Tirumalai. We know the decision of the Court that the Mahant or the trustee who is the Vicharanakartha has not got the power to fine him though he has certain duties to discharge in virtue of his office as Pedda-Jiangar. If only we make an investigation into the history and usages of other institutions, similar usages might come to light. It is for the purpose of seeing that this Bill is more in the nature of consolidating the existing law in regard to the trustees in office and not by way of amending the relations between the trustees and the office-holders of temples or making their positions more difficult than they would otherwise be under the trustees, that I have proposed this amendment. Of course, as I said, the particular case that I referred to is merely an illustration. There will be other cases where you will find that the powers given to the trustee under the clause in question are likely to be somewhat inconsistent with the particular usages of the temples or institutions under the management of the trustee.

"I might be permitted to refer at this stage to the amendment sought to be moved on behalf of the Government by my hon. friend, Mr. N. Gopalaswami Ayyangar. The difference between his proviso and the one I have suggested consists in this : that whereas mine strictly limits itself to the usages that obtain in particular institutions, the amendment which Mr. Gopalaswami Ayyangar proposes to move will have a somewhat wider effect. It gives the power to the Local Government even in cases where admittedly the trustee might have particular powers now in consequence of considerations which might appeal to the Local Government to restrict the powers in appropriate cases. That, Sir, would apply to a different class of cases, at any rate that does not exactly apply to the class of cases which I have in view. With reference to the case which I have in view, all that I ask is that the existing usages need not be interfered with. The amendment of Mr. Gopalaswami Ayyangar has the effect of even interfering with the usages by the exercise of the discretion that is vested in the Local Government. The House will therefore see that the acceptance of Mr. Gopalaswami Ayyangar's amendment does not in any way obviate the need for accepting mine. That is my only reason, at this stage, to refer to Mr. Gopalaswami Ayyangar's amendment."

The hon. the RAJA OF PANAGAL :—"Mr. President, I am to some extent in sympathy with the object of the hon. Member's amendment."

Diwan Bahadur L. A. GOVINDARAGHAVA AYYAR :—"Thanks."

The hon. the RAJA OF PANAGAL :—"But at the same time I must admit that his amendment is vaguely worded. If what he wants is that usages and customs should be respected, we have got provision for that already under clause 75 of the Bill which does respect the usages and customs, and if he wants that particular individuals—"

Diwan Bahadur L. A. GOVINDARAGHAVA AYYAR :—"I have not proposed this amendment in favour of particular individuals. I have only instanced a case."

Clause 52—cont.

The hon. the RAJA OF PANAGAL :—"Such cases would come under that clause. But in any case, as I have already stated, I have sympathy to some extent with the object of this amendment, and hence it is that I have asked Mr. Gopalaswami Ayyangar to move an amendment. Mr. Gopalaswami Ayyangar will move his amendment if the hon. Member withdraws his amendment."

1 p.m.

Mr. C. V. VENKATARAMANA AYYANGAR :—"Sir, the hon. the Minister in charge has referred to clause 75. That clause clearly says :

Save as otherwise expressly provided in or under this Act nothing herein contained shall affect any established usage of a temple or the rights, honours, emoluments, and perquisites to which any person may by custom or otherwise be entitled to in such temple.

Whereas clause 52 (1) says :

All office holders and servants attached to a temple or in receipt of emoluments . . . shall be under the orders and control of the trustee ; and the trustee may fine, suspend, remove or dismiss any of them for breach of trust, incapacity, disobedience of lawful orders, neglect of duty, misconduct or other sufficient cause.

Therefore it will be seen that clause 52 (1) does not refer to clause 75 at all, and in the absence of anything to the contrary, clause 75 is absolutely useless. So far as clause 52 (1) is concerned, all office holders and servants can be dismissed by the trustee. Of course the amendment proposed by Mr. N. Gopalaswami Ayyangar gives power to the Local Government in particular cases to exempt an office holder or servant or a class of hereditary office holders or servants. I would ask the hon. the Minister in charge if exemption has already been declared in certain cases by usage or by decisions of courts, why the Government should take the trouble of exempting them—"

The hon. the RAJA OF PANAGAL :—"If exemptions are already ascertainable by usage where is the necessity for an amendment like the one of Mr. Govindaraghava Ayyar's ?"

Mr. C. V. VENKATARAMANA AYYANGAR :—"My hon. friend, the Minister in charge seems still to think that clause 75 covers clause 52, and I am sorry that he should think so. As I have already said, clause 75 merely says 'Save as otherwise expressly provided in or under this Act nothing herein contained shall affect any established usages, etc.' Therefore, if there is an express provision under this Bill, clause 75 cannot come into operation so far as our object is concerned. Clause 52 is there and it can be applied even in cases where there are decisions of the courts that particular persons should not be molested, and those decisions can be cancelled. Therefore, if the hon. the Minister puts in a proviso under clause 52 to the effect that 'this section will apply to cases, except as otherwise provided already by decisions of courts', or some such thing we shall be satisfied. Clause 75 and the proviso are so vague that it will be found difficult and useless in working them out. Therefore, I think the amendment of Mr. Govindaraghava Ayyar should be accepted or some such modification as the Government may think fit should be introduced. To say that the whole amendment of Mr. Govindaraghava Ayyar should not be accepted but that the amendment of Mr. Gopalaswami Ayyangar should be accepted seems to me to be unfair."

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Clause 52—cont.

Diwan Bahadur Sir T. DESIKA ACHARIYAR :— "There is no doubt that there will be difficulty experienced in the working of clause 52 as it stands. But I do not believe that we should be any nearer the solution of difficulties by accepting the amendment proposed by Mr. Govindaraghava Ayyar which is very vague. For instance, Kattalai Mirasidars are persons not amenable to the control of committees but at the same time who are to perform some sort of services and it is difficult to ascertain by usage or rules of the institutions whether they should be kept amenable to the disciplinary control of trustees or not. It is, therefore, necessary to have some such amendment as that proposed by Mr. Gopalaswami Ayyangar. There is no doubt there will be a considerable amount of difficulty if clause 52 stands as it is together with the amendment of Mr. Govindaraghava Ayyar. There must be some provision which should definitely say what office holders should be under the control, and in what respects they should be controlled."

Rao Bahadur A. S. KRISHNA RAO PANTULU :—"It is admitted on all hands that clause 52 should be modified, and if allowed to be modified, the only point for consideration is in what manner it should be modified, whether it should be on the lines indicated by Mr. Govindaraghava Ayyar or those indicated by Mr. Gopalaswami Ayyangar. The hon. the Minister, while expressing his sympathy for the amendment of Mr. Govindaraghava Ayyar, has stated that it is very vague and indefinite and therefore cannot be accepted. So far as I am able to gather, I think the amendment has been said to be vague because it contains the words 'according to existing usages', and if the insertion of the words 'according to existing usages' would contribute to the vagueness of it, I would point out that what has already been provided for in clause 75 of the Bill and the alternative amendment proposed by Mr. Gopalaswami Ayyangar are vaguer still. The alternative amendment states :

Provided that the Local Government may, in respect of any specified hereditary office holder or servant or class of hereditary office holders or servants, by order restrict and place under such control as they may think fit, the exercise by the trustee of his powers of punishment under this sub-section.

"I may point out in the first instance that this amendment does not indicate any lines in pursuance of which the powers of exemption should be exercised by the Government. It does not indicate any principle which the Government ought to follow in exempting an office holder or a servant from the operation of this Bill. It practically leaves it to the sweet will and pleasure of the Local Government or the person who is in authority for the time being. Again, Sir, the amendment states 'may by order restrict and place under such control'. It does not say 'they would not exercise the power', nor does it say they would exercise it 'under such and such conditions'. It only says 'the Local Government may in respect of any specified hereditary office holder or servant or class of hereditary office holders or servants by order restrict and place under such control, etc., etc.' Now, I would ask the hon. the Minister in charge to consider whether there can be anything more indefinite and vague than the powers proposed to be conferred according to the amended clause. It is our duty on this occasion to provide for all possible contingencies and see that there is not the least scope for litigation. I do not think the hon. the Minister in charge claims any infallibility in this matter and I therefore trust he will provide for all possible contingencies. So

Clause 52—cont.

long as it is not possible for him to indicate the principles which ought to guide the Government in arriving at a conclusion as to which office holders should come within the purview of the clause under discussion and which not, I think it is better for him to accept the amendment of my hon. friend Mr. Govindaraghava Ayyar. His amendment states :

The trustee shall not impose on any office holder or servant of the temple any form of punishment which according to the existing usages or rules, etc., etc.

"The amendment particularly refers to a certain form of punishment. That is one specific circumstance in this amendment to which I would draw the attention of the House. On the other hand, the alternative amendment does not point out any circumstance at all. I would therefore ask the hon. the Minister in charge to consider whether it is not worth his while—he has already expressed his sympathy in favour of this amendment and I would not have taken the trouble of speaking upon it if he had not done so—to take this obvious difference into consideration and to accept this amendment. If any other circumstance occurs to him, it may also be embodied in the clause so that we may have a more specific idea than what it is at present of the office holders who may be exempted."

Diwan Bahadur L. A. GOVINDARAGHAVA AYYAR :—"The hon. the Raja of Panagal asked me to withdraw the amendment of which I have given notice and I should have done so, Sir, with pleasure, at least to oblige my hon. friend, if I had found that I could do so consistently with the purpose I had in view when I framed this amendment. The assurance that is given—"

The hon. the RAJA OF PANAGAL :—"It was only a suggestion to the effect that if he did it, the next amendment would be accepted."

Diwan Bahadur L. A. GOVINDARAGHAVA AYYAR :—"I was just considering that when my hon. friend interrupted me.

"I had the assurance that the amendment of Mr. Gopalaswami Ayyangar would be moved and possibly accepted, so that if my purpose was exactly the same as the amendment to be moved on behalf of Government is intended to give effect to, I might have withdrawn my amendment. I am sorry that the scopes of the two amendments are different. Whatever one may say on both these amendments, my suggestion is that each of them should be examined on its own merits. For instance, the amendment proposed on behalf of Government omits the existing usages, which should be respected. Mine proceeds on the basis that the powers vested in the trustee are far too high, which, taking into consideration the respectability of the particular office-holders or classes of office-holders, should be reduced. It may be that in particular cases the Government may think that a punishment shall have to be invented for meeting the exigencies of the case. But my point, a point which my proviso distinctly expresses, is this : that in awarding punishments, existing usages ought not be departed from. Sir, some of my hon. friends complained that my amendment was vague. It is not vague in the sense that you cannot understand what exactly is meant. The vagueness consists in this : that you do not know what exactly the usages are. That is what you find in clause 75. The ascertainment of the usages with reference to particular institutions is a work of investigation and decision. To the extent

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Clause 52—cont.

that we have not ascertained what those usages are, the expression 'usages' must remain indefinite. Of course, this is not going to prevent us from accepting the word 'usages' either in clause 52 or 75. If the House has no idea at present of the usages governing particular institutions, it is all the more reasonable that my amendment should be accepted, more especially in view of the fact that the hon. the Raja of Panagal has expressed his sympathy in favour of my amendment, notwithstanding the amendment proposed by my hon. friend Mr. Gopalaswami Ayyangar. If my hon. friend, the Minister in charge, looks into both these amendments, he will see that the purpose of my amendment is merely to respect the existing usages. The effect of the amendment proposed on behalf of Government is that, even when there is no usage, the local Government may, for reasons of their own, restrict the form of punishments, and it may be open to them to put these forms of punishments under particular forms of control. Now the House will recognize that these two amendments cover two independent fields. Therefore my submission is that it need not be made obligatory on me that I should withdraw my amendment. As a matter of fact, it seems to me that it is not desirable that the local Government should interfere with the exercise of the powers of the trustee with reference to the punishments which they are entitled to mete out. The power of interference by the local Government with trustees who are managing the religious endowments should be limited and should be exercised in a proper manner. Of course we know it will be said that there are rules which will guide the Government in exercising their powers and they will decide whether particular individuals should be exempted or not. But unless the local Government show sufficient evidence to the effect that there is a general desire that such powers of exemption should be in the hands of Government, one may well consider the possession of these powers by the Government to be altogether invidious. In these circumstances, I submit that the acceptance of the amendment of Mr. Gopalaswami Ayyangar may not be quite self-evident. Whether I am right or wrong in this view does not affect the propriety of accepting my amendment which is merely to see that the usages which now govern particular institutions are not in any way departed from so far as the question of awarding punishment goes. If, as I understand, the hon. the Raja of Panagal and his party are in sympathy with this view, I submit that this amendment ought to be accepted."

1-15 p.m.

The hon. the RAJA OF PANAGAL:—"Mr. President, after the very effective reply which my hon. friend, Sir Desika Achariyar, has given, it may not be necessary for me to detain the House with any lengthy reply. But there are one or two points which I wish to refer to. My hon. friend, Mr. Govindaraghava Ayyar contended that his amendment was not vague. Well, Sir, what I should like to ask my hon. friend is: What are the usages? What are the rules? And by whom were these rules prescribed? Is it by the committee, the Board or the Local Government? Then, Sir, as to the usages I will place before the House one case. For instance, there is an *archaka* in a temple who has been doing his duties very well during the last thirty years or so and also his predecessors who were doing their duties ever since the starting of the institution. Within the knowledge of the present generation there might not have been one instance of his or his predecessors having been fined. Does it constitute a usage? Again, I have already stated

Clause 52—cont.

the difficulty of understanding what he means by rules. Whose rules are they? In any case, he has stated that the amendment of Mr. Gopalaswami Ayyangar is desirable. When it is desirable and when it is accepted, all cases of exemptions can be brought under that and each case will be decided on its merits. In these circumstances, I think it is not desirable to accept any other amendment."

The amendment was put and lost.

(Amendment No. 181.)

Rai Bahadur N. GOPALASWAMI AYYANGAR:—"In moving the amendment which stands in my name I wish to offer a few remarks. Before doing so, I will read the amendment:

Add the following as a proviso:—

'Provided that the Local Government may, in respect of any specified hereditary office-holder or servant or class of hereditary office-holders or servants, by order restrict and place under such control as they may think fit, the exercise by the trustee of his powers of punishment under this sub-section.'

"The idea of this amendment, I may at once say, was suggested by the amendment of Mr. Govindaraghava Ayyar which has just been lost. The only reason for Government taking up this amendment was to give definiteness to what was at the back of Mr. Govindaraghava Ayyar's mind so that the trustee may follow it. As Mr. Govindaraghava Ayyar pointed out, our difficulty has really been how we are to ascertain the usages or rules of the institutions governing the forms of punishment which might be inflicted on a particular class of office-holders and servants. He referred us to clause 75 where the Bill refers to usages and he seems to imply that the usages which can be ascertained under clause 75 can equally well be ascertained under this particular clause. But there is one essential distinction and that is the fact that clause 52 refers to the enforcement of discipline in a particular temple. I ask, Sir, if it would be conducive to the enforcement of discipline if every time a trustee wants to punish a particular servant he has to make sure whether according to the usage of the temple he could inflict a particular punishment on him. The usage may be alleged or not and there must be somebody to decide what the usage is. It is much better that every trustee should know exactly whether a particular class of office-holders cannot be punished in a particular way. On the other hand, if every time he proposes to punish a particular office-holder he has to satisfy himself whether the usage allows punishment and if so, what form of punishment, and then punish him, it will lead to practical difficulties. Even in cases where after such consideration he comes to a particular decision, there may be a court, perhaps, which will sit in judgment over whether such a usage exists or not. It is therefore to enable a trustee to enforce discipline and not really to harass a particular individual who may be obnoxious to him that power is given to the Local Government to make an inquiry in the case of particular institutions, in the case of particular offices or in the case of particular class of offices and then issue an order saying that a particular class shall not be fined, or shall not be suspended or shall not be fined and suspended without the sanction of the Board. It is really for the purpose of

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Clause 52—cont.

giving some definiteness to Mr. Govindaraghava Ayyar's amendment that I suggest this amendment and I commend it for the acceptance of the House."

Diwan Bahadur M. RAMACHANDRA RAO PANTULU :—" I must say that I do not possess the enthusiasm which my hon. friend has for the regulating of punishments of hereditary trustees by the Government. I should only like to point out that the position of the unfortunate trustee which has been gradually rendered worse and worse by each clause is now going to be completed by this amendment which my hon. friend has framed. He wishes that the trustee should exercise these functions in regard to the punishment of hereditary officers under certain conditions or special rules which Government will after inquiries frame in regard to these hereditary offices. Sir, the power which he proposes to take is certainly a general power to prescribe a class of punishments in the case of these hereditary officers and I am certain that these general orders of Government giving the trustees wide powers will considerably shake them. Assuming for the sake of argument that the trustee, notwithstanding these orders punishes these hereditary officers, may I ask my hon. friend whether he proposes to give power to the Government to revise such orders and also power to enforce such orders made on appeal ? "

The hon. the RAJA OF PANAGAL :—" May not the same contingency arise when these punishments are inflicted under usage and rules ? "

Diwan Bahadur M. RAMACHANDRA RAO PANTULU :—" The amendment of Mr. Govindaraghava Ayyar was intended entirely for a different purpose and that is : whatever punishment is imposed by the trustee he is not to be fettered by any rules of the Government but should only see that it is in accordance with the usages of the temple. In other respects there is absolutely no attempt to interfere with the powers of the trustee ; whereas under this amendment Government propose to issue orders controlling the authority of the trustee in regard to the powers of punishment which he has over these hereditary officers. It is a much larger order which empowers Government to issue general orders for controlling the powers of the trustee."

The hon. the RAJA OF PANAGAL :—" Am I to understand that the hon. Member is contending against the very object of the amendment because it restricts the powers of trustees in matters of punishment ? "

Diwan Bahadur M. RAMACHANDRA RAO PANTULU :—" I am opposing this amendment. I say that the Local Government, by framing rules and issuing general orders, are restricting the control exercised by the trustees. This is a substantial interference with the powers of the trustee and is likely to break up temple organization. If this becomes law, it seems to me that it would really be a thin end of the wedge, and the local Government will have a series of appeals for not obeying their orders. If you accept the other amendment of Mr. Govindaraghava Ayyar it does not interfere with the powers of the trustee."

The hon. the RAJA OF PANAGAL :—" Does this amendment interfere with the powers of the trustee ? As it is, the trustee need not even respect the usages but can go on fining. "

Clause 52—cont.

Diwan Bahadur M. RAMACHANDRA RAO PANTULU :—" That is exactly the reason why my friend Mr. Govindaraghava Ayyar wanted to restrain the power of the trustees by saying that the punishments should be according to usages. Except to that extent there is no interference. Now the Local Government will be empowered to frame rules for the conduct of trustees in regard to the punishments which may be inflicted upon these hereditary office-holders and servants. Therefore, I say, Sir, that this is a much larger power which the Local Government wishes to take over the trustees than Mr. Govindaraghava Ayyar's amendment and substantially interferes with the powers that the trustees can command. If these orders are to be modified, the Local Government should have powers of enforcing their own orders on trustees. Under these circumstances, it is better that some other form is introduced than the one suggested in this amendment. As already pointed out, one of such forms is Mr. Govindaraghava Ayyar's amendment."

Rao Bahadur A. S. KRISHNA RAO PANTULU :—" There is one amend-
1-30 p.m. ment to this amendment which I have just handed over and which may be acceptable to all in this House. I believe Government also have no objection to this amendment. With your permission, I move the amendment—

After the word ' servants ' *insert the words* ' and subject to the provisions of section 75 '."

The amendment was put and carried.

The amendment of Mr. N. Gopalaswami Ayyangar as amended was put and carried.

At this stage the Council rose for lunch.

The Council re-assembled after lunch at 2-30 p.m. with the hon. the Deputy President in the Chair.

Sub-clause (2).

(Amendment No. 182.)

Rao Bahadur A. S. KRISHNA RAO PANTULU :—" Sir, I move—

For the words ' such time as the Board may fix ' *substitute the words* ' one month '.

" Sir, the reason why I move this amendment is obvious, and for the same reason I have given notice of an amendment similar to this with regard to sub-clause (3) also. A definite time must be fixed within which appeals should be preferred. I think it is better to make a definite provision about this. Apart from this, there is some technical difficulty. I understand that the Board is required to make by-laws for the purpose of fixing the time. If at least clause 15 of the Bill dealing with the powers of the Board to make by-laws specifically referred to appeals being presented and the fixing of the time for the purpose, I can understand this We do not find any provision of the sort in clause 15 as it stands at present. In the absence of a provision such as this, it may be that the Board in each individual case or cases may fix time for the purpose of filing appeals as provided for in the sub-clause. I think the provision, as it stands, is very vague and indefinite and I therefore move this amendment."

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Clause 52—cont.

The hon. the RAJA OF PANAGAL :—" Sir, I agree there is some force in the hon. Member's argument. But, unfortunately, if I accept the amendment moved by him, the point of time from which this one month is to be calculated is not specified. He does not say from what date the period of one month should be given. He merely says 'one month' should be substituted for the words 'such time as the Board may fix'."

Rao Bahadur A. S. KRISHNA RAO PANTULU :—" One month from the date of communication of the order. It is always understood so."

The hon. the RAJA OF PANAGAL :—" So, I think I had better accept amendment No. 403 on the agenda which says—

For the words 'the Board may fix' *substitute the words* 'may be prescribed'."

The amendment was by leave withdrawn.

(Amendment No. 183.)

Mr. R. SRINIVASA AYYANGAR :—" Mr. President, Sir, I move—

For the words 'such time as the Board may fix' *substitute the words* 'one month from the date of punishment'.

I do not think there will be any difficulty in accepting this amendment as it is very definite and says 'one month from the date of punishment'. This brings out the idea clearly."

The hon. the RAJA OF PANAGAL :—" Here, again, there is another difficulty. He says 'from the date of punishment'. Is it from the date on which the order was communicated to the party or from the date on which it was passed ? I think that if I accept the amendment of my hon. friend Mr. T. Narasimhacharlu (No. 403 on the agenda) the object will be achieved."

The amendment was by leave withdrawn.

(Amendment No. 184.)

Rai Bahadur T. M. NARASIMHACHARLU :—" Mr. President, Sir, I beg to move—

For the words 'the Board may fix' *substitute the words* 'may be prescribed'."

The hon. the RAJA OF PANAGAL :—" I accept the amendment."

The amendment was put and carried.

(Amendment No. 185.)

Rao Bahadur A. S. KRISHNA RAO PANTULU :—" Sir, I beg to move—

Omit the words 'whose decision shall in the case of a non-hereditary office-holder or servant be final.'

" Sir, my object in moving this amendment is that, in matters of punishment, we need not make any distinction in providing for appeals in the case of non-hereditary office-holders, servants or others. It will be known that non-hereditary office-holders and servants ought not to be viewed from a standpoint different from any other paid servant appointed by any other officer from time to time. They stand on the same footing

Clause 52—cont.

as others. It must also be realized that there are a large number of cases in which these persons have been provided with second appeals against orders of punishment inflicted on them. While we realize that we must safeguard the interests of either trustees or members of the Committees appointed from time to time, still, in the matter of punishment, I think it is certainly dangerous to restrict the right of appeals in the case of these persons owing to the misfortune of their being non-hereditary office-holders or servants. A second appeal has been provided in the case of hereditary office-holders and servants and it must be provided also in the case of non-hereditary office-holders and servants."

The hon. the RAJA OF PANAGAL :—" Sir, my hon. friend himself admits that elsewhere we have provided for a second appeal in the case of non-hereditary persons. That shows how Government themselves are anxious to see that the vested interests are reasonably safeguarded."

Rao Bahadur A. S. KRISHNA RAO PANTULU :—" I think the hon. Minister has misunderstood me. I only said that in the case of certain other officials second appeals had been provided and I requested that the same privilege might be extended to these people also. That is why I moved the amendment."

The hon. the RAJA OF PANAGAL :—" He admits, I suppose, that there is a difference between hereditary and non-hereditary servants. In the case of hereditary servants, these punishments may amount to an extinction of their hereditary right but in no case of non-hereditary servants will it amount to that. That is why this distinction is observed. Further, the Select Committee, after very careful consideration, came to the conclusion that it was not desirable in the case of non-hereditary servants that there should be a second appeal in all matters. For these reasons, I am unable to accept the amendment."

Rao Bahadur A. S. KRISHNA RAO PANTULU :—" Sir, I have nothing further to state. If I have not been able to convince the hon. the Minister and to induce him to accept the amendment, he has not also succeeded in inducing me to change my attitude. I therefore press my amendment."

The motion was put and lost.

Sub-clause (3).

(Amendment No. 186.)

Rai Bahadur T. M. NARASIMHACHARLU :—" Sir, I move—

For the words 'as the Board may fix' *substitute the words* 'as may be prescribed'."

The hon. the RAJA OF PANAGAL :—" I accept the amendment."

The amendment was put and carried.

Rai Bahadur T. M. NARASIMHACHARLU :—" Sir, before clause 52 is put to the vote, I wish to say one word. In clause 52, remedy for one class of servants is forgotten, viz., those servants who belong to temples to which committees have not been appointed."

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Clause 52—cont.

The hon. the RAJA OF PANAGAL :—" May I rise to a point of order, Sir? There is no amendment to that effect and he is therefore not entitled to speak."

The hon. the DEPUTY PRESIDENT :—" Is the hon. Member moving an amendment? "

Rai Bahadur T. M. NARASIMACHARLU :—" I am opposing the passing of clause 52 and I give my reasons for the same.

" Sir, it will be seen from amendment No. 172, which was moved by Mr. Munuswami Nayudu and accepted by Government, that the words :

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over which a committee has jurisdiction

have been omitted, which means that there will be some temples over which there will be no committee. There will be trustees for these temples, and these trustees will punish their servants. Now, clause 52 provides only for appeals against the punishments inflicted by trustees over whom there is a committee and over which there is the Board. Suppose there is a temple in which there is a trustee and over which there is no committee and the trustee dismisses one of the servants, to whom is the servant to appeal? So, I oppose this whole clause."

The hon. the RAJA OF PANAGAL :—" May I say a word, Sir? If there are no committees in the case of some temples or endowments there will be schemes framed and under such schemes it is likely to make arrangements for contingencies of the sort."

Clause 52 as amended was put and passed and added to the Bill.

Clause 53.

Clause 53 was put and passed and added to the Bill.

Clause 54.

(Amendment No. 187.)

Mr. C. MADHAVAN NAYAR (Advocate-General) :—" I beg to move—

Add the following as a proviso :—

' Provided that where the person in possession of the property on which the endowment is a charge is not the person responsible in law for the performance of the charity or service, and the amount referred to in this section is recovered from the person in possession, the court shall, on the application of such person, pass an order for the recovery of the amount from the person responsible in law and such order may also be enforced as if it were a decree of such court.'

" Mr. President, the object of moving this amendment is this. A person in possession of the property who is not responsible for the performance of the charity or service, may be compelled to make payment by the court under clause 54 as it stands at present, and afterwards he may have to file a suit for the recovery. You will see that a person in possession who is not interested in the charge will have to pay, and in order to entitle him to get that money which he has so paid without resorting to a formal suit, this

Clause 54—cont.

proviso is intended. He may like to get an order and that order may be executed as if it were a decree of such court. This is intended simply to safeguard the position of that person."

The hon. the RAJA OF PANAGAL :—" I accept the amendment."

The amendment was put and passed.

Clause 54 as amended was put and passed and added to the Bill.

Clause 55.

*(Amendment No. 188.)

Mr. M. SURYANARAYANA :—" Sir, I move—

After the words 'the committee' *insert the words* 'or Board'.

"Sir, the object of moving this amendment is that the board may have the right of ascertaining what accounts, returns, reports or other information relating to the administration in its charge the committee requires, so that the board may check if any unnecessary reports or returns or accounts are required by the committee. The Board must be apprised of what the committee is doing so that they might exercise some check over the committee whenever it is necessary."

The hon. the RAJA OF PANAGAL :—" Sir, I have no objection to the amendment too."

The motion was put and passed.

Clause 55 as amended was put and passed and added to the Bill.

Clause 56.

Clause 56 was put and passed and added to the Bill.

Chapter VI, clauses 57 *to* 61.

(Amendment No. 189.)

Diwan Bahadur S. Rm. M. Ct. PETHACHI CHETTIYAR :—

" (*a*) *For this chapter substitute the following* :—

' 57. (1) *Maths and Disciples Committee.*—A committee of five members with the Matadhipathi or the head of a math as President shall be constituted for the proper control, maintenance and administration of every Saiva Siddhanta Math.

(2) The members of such committee other than the President shall be nominated by the court from among the disciples of the maths concerned.

(3) The provisions of this Act relating to a temple committee and its president shall apply *mutatis mutandis* to the disciples committee formed under this section and the Matadhipathi.'

(*b*) *Re-number the clauses in the subsequent chapters.*

" Sir, the control proposed to be had over the excepted temples is a matter that pains the public very much. That there is no necessity for introducing an innovation in the case of excepted temples, which is contradictory to the

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Chapter VI, clauses 57 to 61—cont.

term itself, I for one, supported by the opinion of my constituents as well as the persons interested, have to place for the consideration of the House. The term 'excepted' is in itself enough to indicate that all such excepted temples should not be brought under the purview of this Bill. Most of them are private temples belonging to particular communities and particular individuals of one class of people. That such ancient temples had never known any kind of control by any Government till now existing is a matter of history and fact. By introducing control over such excepted temples, we shall only be introducing some kind of disagreement and offending the sentiments of the adherents, devotees and votaries of such temples.

"For instance, the Sri Nataraja's temple at Chidambaram, which, I believe, comes under the category of 'excepted temples' as defined in the Bill, is almost a personal property of the joint family of Dikshathars and the Lord Nataraja himself. To make any disruption therein would only be a sin. The Dikshathars of this temple are not mere trustees, but they are the makers and doers of what constitutes the holiness and sanctity of the temple itself. My hon. friend, the Raja of Ramnad, has already very well explained the position of this temple the other day. They do not appropriate or misappropriate the so-called funds of the temple, but they merely participate, as their due for the services rendered, holy and sacred in this instance, in the offerings of the devotees such as *pavadai, katalai*, etc. The only cash offering is the money put into the hundi, which is, as a matter of fact, spent for the purposes of the temple alone, and it is never participated in by them. If any of my hon. brethren in this House think of participating in the participated offerings, by way of demanding 1½ per cent thereof for the Government, it would be nothing but claiming a morsel of food for the Government out of the food eaten by the Dikshathars. There is an old saying in the Tamil country, as 'பிணைக் எடுக்குமாம் பெருமாள், அத்தைப் பிடுங்குமாம் அனுமார்.' This Bill in this respect is only a practical illustration of the said proverb.

"There are many other temples which come under the category of 'excepted temples' and which are nothing but private properties of certain communities or of particular individuals or of some class of people, though they are all open to public worship. The private temples of the zamindars, the Kannikaparameswari temples of the Komutti Vaisyas, the nine temples of the Nattukottai Nagarathars and many others are all coming under this category. I may here admit that many of the said temples have enormous valuable properties. The other day when the question of exempting the Chidambaram temple was considered, the hon. the Raja of Panagal said that that temple deserved the preservation of its valuable properties and further raised the question how we were going to guarantee the preservation of those properties. I cannot understand why the hon. the Minister should be so very anxious about preserving the private properties of the excepted or private temples.

"In these circumstances, there is no justification whatsoever to bring them under the operation of a Hindu Religious Endowments Act. If this House should think of having any check over them so as not to allow the owners or managers abuse any of the funds of any such temple, an annual Government audit of accounts will, I think, serve the purpose adequately.

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Chapter VI, clauses 57 to 61—cont.

"In moving this amendment, Sir, I have to further observe that as the mismanagement of some of the trustees and heads of *maths* is considered to be one of the main reasons for the introduction of the Bill, the mere submission of the annual budgets by the heads of maths to the central controlling authority cannot be considered as an effective check over the management. At least the approval of the same by the central authority might be something.

"Further, a disciples' committee for looking into the details of the working of the maths at least as far as the Saiva Siddhanta maths are concerned, is found to be quite indispensable. I particularize the Saiva Sidhanta maths here, because I am asked by many of the members of my constituency to speak of these maths in particular, as it is very well known to them that much money from these very rich maths is being wasted on purposes other than those for which they were intended.

"Regarding the desirability of forming this disciples' committee, my hon. friend, Mr. Ramalingam Chettiyar, has expressed his views in his dissenting minute. My hon. colleagues, Messrs. Somasundaram Mudaliyar and Arunachala Mudaliyar, have also expressed in their joint dissenting minute that the formation of a disciples' committee is necessary. In this connexion, Sir, I am sorry to tell you that some one or two of the hon. Members of this House, who also belong to the same non-Brahman community to which I belong, seem to think that it will not be wise to expose the follies of our own maths in the course of a legislation while some of the members of the Brahman community have no necessity to do so. They say that since one or two of the maths like the Sri Kanchi Kamakoti Peetham of Kumbakonam do not give room for such a step, our Saiva Siddhanta maths, like the Thiruvaduthurai Atheenam, which could have been most probably the cause of such a contemplation and even the introduction of this Bill, should not be subjected to a strict control. But, Sir, I do not understand how far I should respect their feelings in this matter.

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"However, let me be plain, Sir, even at the risk of losing the sympathy of such persons, and tell you briefly a little about my visit to the said Tiruvaduthurai math in the year 1912. I, in my capacity as the President of the அறநிலைப் பொருட் பாதுகாப்புக் கழகம் which means a committee for protecting the charitable trust properties—"

The hon. the Raja of Panagal:—"Sir, I rise to a point of order. Is the hon. Member in order in referring to these details which have already been disposed of?"

Diwan Bahadur S. Rm. M. Ct. Pethachi Chettiyar:—"What? the disciples' committee, Sir?"

The hon. the Deputy President:—"The best thing for the hon. Member is to give a summary of the whole thing without going into details."

Diwan Bahadur S. Rm. M. Ct. Pethachi Chettiyar:—"I am not narrating a big story. I shall be brief, Sir. In my capacity as the President of the அறநிலைப் பொருட் பாதுகாப்புக் கழகம், which means a committee for protecting the charitable trust properties along with five other

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Chapter VI, clauses 57 *to* 61—cont.

members of the same committee, I was appointed to wait on a deputation before His Holiness the then Pandarasannidhi by the Saiva Conference held in 1912 at Palamcottah."

[Here, the time limit expired and the speaker resumed his seat.]

The hon. the RAJA OF PANAGAL :—" My hon. friend from Trichinopoly has argued the case at great length taking the instance of Chidambaram as his basis. I cannot understand, Sir, how he can introduce that instance at this stage. The question was discussed in this House and a decision was arrived at. Sir, as a matter of course, all the three sub-clauses contained in the amendment now moved have been disposed of by this House. The question does not arise at this stage. In opposing the amendment, I have only to say that the question has been carefully considered by the Select Committee and also by the House."

The motion was put and lost.

Clause 57.

(Amendment No. 190.)

Mr. R. SRINIVASA AYYANGAR :—" Sir, I move to—

Omit this clause.

Under this clause, the trustee of every math and excepted temple has in each year to submit to the board a budget showing the probable receipts and disbursements of the following year and a statement of the actual receipts and disbursements of the previous year; and the board has been invested by the Bill with powers to vary or alter the various items in the budget. So far as this clause is concerned, the duty imposed on the *matadhipatis* will throw upon them a burden which in the very nature of things is too much to expect them to bear. This is likely to interfere with the spiritual side of their administration, and to that extent it is likely to detract from the duties appertaining to the office and the position which they are expected to fill. The preparation of the budget showing the probable receipts and disbursements of the following year and a statement of the receipts and disbursements of the previous year will take a lot of time, and if the matadhipatis are to escape a criminal prosecution and apply their minds to every matter of detail, I am sure they will find it very difficult, and a large portion of their time, which the disciples will expect them to utilize for the purpose of religious discourses like *muthrathanam*, *bharanyasama*, etc., will be taken up and consumed by this purely wordly affair which they are required to do for the satisfaction of this board which is not going to contribute a pie towards the maths. There is not even the mutuality that one would expect and in these circumstances I move for the omission of the clause."

Rai Bahadur T. M. NARASIMHACHARLU :—" I have given notice of a similar amendment, Sir, for the omission of item (*a*) of the clause."

The hon. the DEPUTY PRESIDENT :—" Order, order. We shall come to that later on."

Rai Bahadur T. M. NARASIMHACHARLU :—" I am afraid, Sir, I shall be ruled out of order then. I wish to speak a few words now."

Clause 57—cont.

The hon. the DEPUTY PRESIDENT :—"The hon. Member will please wait."

The hon. the RAJA OF PANAGAL :—"Sir, my hon. friend, Mr. Srinivasa Ayyangar, wishes to make out a case that this particular clause of the Bill would interfere with the spiritual activities of the *matadhipatis*. Sir, this question has been discussed at great length before and the House has arrived at a decision."

Mr. R. SRINIVASA AYYANGAR :—"That discussion was with reference to some other provision which did not impose on the *matadhipatis* a burden of this character."

The hon. the DEPUTY PRESIDENT :—"But substantially the point discussed was the same."

The hon. the RAJA OF PANAGAL :—"The same point was discussed, Sir, as to the unfortunate position of the *matadhipatis* having to do something with temporal properties. It is none of the making of this Bill. They have been in possession of temporal properties and to that extent responsible to law. They cannot evade their liability to be dealt with under sections 92 and 93 of the Civil Procedure Code. So, Sir, this does not introduce any new principle and objection cannot be taken on that account. In these circumstances, I cannot accept the amendment."

Mr. R. SRINIVASA AYYANGAR :—"Sir, reference was made to sections 92 and 93 of the Civil Procedure Code. These provisions do not require the submission of any budget."

The amendment was put and lost.

(Amendment No. 191.)

Mr. S. T. SHANMUKHAM PILLAI :—"I move the amendment standing in my name for the formation of a committee of disciples."

The hon. the RAJA OF PANAGAL :—"I rise to a point of order. The question was raised by Mr. Pethachi Chettiyar, and it was decided by the House."

The hon. the DEPUTY PRESIDENT :—"I think the hon. Member is out of order in moving his amendment."

Mr. S T. SHANMUKHAM PILLAI :—"Anyhow, I wish to give expression to the feelings and sentiments of my electorate on this question."

The hon. the DEPUTY PRESIDENT :—"You have said it and the electorate must know. Any further speech is out of order."

(Amendment No. 192.)

Rai Bahadur T. M. NARASIMHACHARLU :—"I wish to move my amendment—

To omit item (a) of this clause."

The hon. the DEPUTY PRESIDENT :—"The question has been decided already and the hon. Member will not be in order."

Clause 57 was then put and passed and added to the Bill.

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Clause 58.

(Amendment No. 193.)

Mr. R. SRINIVASA AYYANGAR :—"Sir, I move to—

Omit this clause.

Sir, if this clause is allowed to stand part of the Bill, it will make the position of the *matadhipatis* intolerable. The clause enables twenty persons having any interest to make an application to the Board. Properly speaking, if there is gross mismanagement or if the *matadhipati* lays himself open to a charge of questionable waste, there is absolutely no reason why persons aggrieved should not be permitted to have their grievances ventilated in the courts in the first instance instead of enabling them to resort to the Board in the first instance, conferring upon the Board powers of enquiry in the second instance and then vesting the Board with jurisdiction for framing a scheme in the third instance. The intermediate agency, the Board, may go, and it may be perfectly open to persons to proceed straightway in the first instance to courts. It is with this object in view that I propose this amendment. If this clause is retained, the *matadhipatis* will be at the mercy of the twenty persons, scrupulously or otherwise I do not trouble myself about, and to that extent the clause will be a mischievous provision."

The hon. the RAJA OF PANAGAL :—"At present, Sir, one or two men posing themselves as persons interested can interfere."

Mr. R. SRINIVASA AYYANGAR :—"But he or they can go straightway to the court after getting the sanction of the Advocate-General."

The hon. the RAJA OF PANAGAL :—"What difference does it make whether they go to court or to the Board, I cannot understand. Whatever it is, we have discussed this question at great length and we have decided that we should have a Board. Having regard to the constitution of the Board and having conferred some powers on them, I do not think the question can arise at this stage. I cannot accept the amendment."

Mr. R. SRINIVASA AYYANGAR :—"The amendment is perfectly in order, Sir. Our efforts to have the Board turned upside down proved ineffectual, but by no means it follows that the Board should be vested with all the powers claimed for it by the other side."

The amendment was put and lost.

(Amendment No. 194.)

Rai Bahadur T. M. NARASIMHACHARLU :—"Sir, the amendment that I now move is a very small amendment, and it runs—

For the word 'or' *occurring after the words* 'for improper purposes' *substitute the word* 'and'.

I wish to substitute 'and' for 'or'. My point is there may be mismanagement and any 20 persons may come forward and say 'Here is a grand opportunity for scheming or rather for preparing a scheme'. In this way people will be coming forward too often to apply to the Board. I therefore submit, Sir, that 'and' should be substituted for 'or'."

Clause 58—cont.

The hon. the RAJA OF PANAGAL:—"Sir, the amendment is not so insignificant as my hon. friend would wish me to understand it. It makes a great deal of difference if the substitution is made of 'and' for 'or'. In fact, even where this misappropriation and mismanagement may exist, 20 persons may not be forthcoming. Is it the contention of my hon. friend that in such cases no action should be taken? If that is the case, I do not think it deserves any consideration by this House."

The amendment was put and lost.

(Amendment No. 195.)

3-15 p.m.

Rai Bahadur T. M. NARASIMHACHARLU:—"Sir, I beg to move the following amendment and hope that the Government will see its reasonableness and accept it:

Between the words 'Board may' *and* 'hold' *insert the words* 'after setting forth the grounds of such belief in writing and intimating them to the trustee and other persons interested, itself.'

I want only to say this, Sir. Let nothing be done without its being intimated to the parties concerned. It may be that the charge is that the *mataadhipati* may be misappropriating money. It may be that 20 persons may come and complain. But what I do want is that when the Board wishes to take action it should be satisfied that there is ground for proceeding with the matter. Also, let the grounds for such satisfaction be set forth before the parties concerned, so that they may know what is being done at their back."

The hon. the RAJA OF PANAGAL:—"Sir, I am afraid I cannot accept this amendment too. I do not think that, if accepted, it would serve any good purpose, because all these matters will come in their right time when the Board takes the case into cognizance for holding an inquiry, and they will consider whether there shall be notice to the trustee before the matter is inquired into by the Board. For this reason, I regret I cannot accept the amendment."

The motion was put and negatived.

(Amendment No. 196.)

Mr. T. SIVASANKARAM PILLAI:—"Sir, the amendment which stands in my name and which I beg to move runs thus:—

Add the following as a proviso:—

'Provided that the Board in its discretion may call upon any applicant or applicants to deposit a sum not exceeding Rs. 1,000 as a guarantee of good faith in making the application before admitting the same for inquiry.'

Sir, it is a matter of common experience that these temple affairs, as many other village and communal affairs, are a fruitful source of vexatious litigation especially when factions are engaged in them. This trouble has been anticipated in the clause itself, for it reads—

When the Board has reason to believe that the trustee of a math or excepted temple has been mismanaging the endowments of such math or temple or has been spending or alienating them for improper purposes.

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Clause 58—cont.

That is, it is to be informed of the conditions and it has to take action *suo motu*. The clause continues—

or when not less than 20 persons having interest make an application to the Board stating that in the interests of the proper administration of such endowments a scheme of administration should be framed, etc.

The framers of the Bill have increased the number of persons that have to apply under this clause to 20, so as to guarantee the good faith of the circumstances under which the application is made. Now, I am afraid this limitation is not enough. We can see from our own experience how easy it is to obtain as many persons as possible for purposes like this. If you write something and go to some of your friends and ask them to affix their signatures thereto, they will do so readily. Therefore, I think it does not afford sufficient guarantee. What I suggest is that the Board should be given discretion to ask for a deposit ranging from Rs. 1,000 downwards. Discretion may be vested in the Board to fix the amount of the deposit having regard to the status of the temple or *math* to which the application relates. So, I think my proviso will be a very wholesome thing to restrain vexatious proceedings. This is the reason, Sir, why I propose this amendment and I hope it will be accepted by the hon. the Minister."

The hon. the RAJA OF PANAGAL :—" Sir, I see that there is some force in the hon. Member's argument for the acceptance of his amendment. But there seems to be difference of opinion about the amount of the proposed deposit. The Hon'ble Member fixes the maximum at Rs. 1,000. If the hon. Member is agreeable to having it at such sum as may be fixed by the Board, I would have no objection to accept it."

Mr. T. SIVASANKARAM PILLAI :—" I have no objection to accept the proposal, and I withdraw my amendment."

The amendment was by leave withdrawn.

(Amendment No. 197.)

The hon. the RAJA OF PANAGAL :—" Sir, the amendment I move is as follows :—

Add the following as a proviso :—

' Provided that the Board in its discretion may call upon any applicant or applicants to deposit such sum as the Board may fix, as a guarantee of good faith in making the application before admitting the same for inquiry.' "

Mr. R. SRINIVASA AYYANGAR :—" I should like to know, Sir, whether any maximum is proposed to be prescribed."

The hon. the RAJA OF PANAGAL :—" That is left to the discretion of the Board."

Diwan Bahadur L. A. GOVINDARAGHAVA AYYAR :—" Sir, I beg to oppose this amended amendment. Let us understand what exactly it means. It does not contemplate that the Board should make any rules in respect of it, because, according to the proviso, it is only in particular cases when there is an application to make an inquiry that the Board is going to call upon the applicant to deposit a certain sum. So, it comes to this : that the Board

Clause 58—cont.

in every case which it is called upon to consider must first think of the application and then settle in its mind what exactly the amount is that the applicant is to be asked to deposit. That amount may be even a lakh of rupees because there is no limitation to the maximum amount that the Board can fix. It will be to use a phrase which is very easily understood amongst lawyers, like the foot of the members of the Board. They may fix any figure they please, as there is no prescribed maximum. If, on the other hand, the amendment fixes a maximum limit, leaving it to the Board as to what exactly the amount is to be that they may call upon the applicant to deposit, one can understand the meaning of it. As it is, it will all mean this: the Board, merely on an application, without entering into the merits of the case,—because at that stage it cannot enter into the inquiry—is asked to fix a certain sum without limit. I think, Sir, that the effect of the second amendment would be much worse than the original amendment itself."

The hon. the RAJA OF PANAGAL:—"Sir, even the original amendment moved by Mr. Sivasankaram Pillai gave the discretion to the Board provided that the amount was not over Rs. 1,000. In this amendment, I have removed the maximum limit of Rs. 1,0 0 for the reason that there may be some cases where the interests involved are very large. In order to meet such cases I have removed the maximum limit of Rs. 1,000. Now, it is rather strange that the Board cannot be credited with the discretion to demand a sum which it really thinks necessary in particular cases for a guarantee. Sir, I do not see any objection to the amendment as moved by me being accepted by the House."

Rao Bahadur A. S. KRISHNA RAO PANTULU:—"Sir, I want to oppose this amendment moved by the hon. the Minister. I believe that if we only bear in mind the discussion which has taken place about the principles of the Bill, I think we shall recognize that we are doing something by means of this amendment to violate these principles. We have all along proceeded on the footing that in order to meet cases of misappropriation and malversation of trust property there must be some machinery by which these properties must be brought under control. If by means of this provision suggested in the amendment we are going to impose conditions whereby we make it difficult for the persons concerned to go before the proper authorities and state their objections, we shall be doing something derogatory to the main principle of the Bill itself. In the original amendment no doubt discretion was left to the authorities to fix the amount, but a maximum was prescribed. But, according to this amendment, that maximum is sought to be removed, and it is practically left to the discretion of the Board to fix the sum.

"Secondly, under the provision in the clause as it stands, there are to be 20 applicants. If the amendment is carried, it will not be clear what each applicant is to deposit. Suppose the Board asks each person to deposit Rs. 1,000. Then it is practically making it impossible for the aggrieved persons to make representations. I want to know if that is the object of the Bill. My submission is this. If we bear in mind the provisions already in force under the existing law, persons interested in the matter can move the Collector or the Advocate-General, and if they obtain their sanction or permission, they can file suits in the courts. But they are not called upon to deposit any amount at all. The Collector or Advocate-General makes some

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Clause 58—cont.

sort of informal enquiry to satisfy himself as to the *bona fides* of the applicants, and if he is satisfied he gives the necessary sanction or permission. Why in this particular case we should take away the privilege now enjoyed by interested persons making proper representations before the authorities and satisfying them that there is a case for interference, I cannot understand. I for one cannot approve of the principle of asking for a deposit of money as in the case of election disputes. There is a world of difference between the case under discussion and election disputes. This Bill is an attempt at the better administration of charities and why should we penalize persons who are not in a position to deposit money? I therefore object to the principle itself in the first instance. Again, the amendment will introduce a provision whereby the Board may, notwithstanding the faith of my hon. friend the Raja of Panagal, fix the amount as they like, for there is no knowing what they will do if we do not limit the maximum of the deposit. Therefore, Sir, for the reason that the fixing of any amount of deposit is derogatory to the principle of giving facility for the persons interested in making representations about the temple affairs, and secondly owing to the further objection that this particular proposal is likely to result in serious harm to parties, I feel it my duty to oppose the amendment."

Mr. T. SIVASANKARAM PILLAI :—" Sir, my hon. friend, Mr. Krishna Rao, seems to take exception to the principle of the amendment. But I may explain it in this way. This Board is not to levy this deposit indiscriminately in each and every case ; the matter is proposed to be left to its discretion. There may be cases and cases. There may be certain cases wherein owing to the factious spirit various applicants come in. It is proposed to meet such a contingency by means of the amendment, and there is no idea of restraint or prohibition. On second thoughts I am afraid that even the taking away of the maximum of Rs. 1,000 would not be beneficial but injurious to the people, because then the Board may become arbitrary and it may perhaps use this provision so as to prevent applicants from coming forward by asking for a deposit of Rs. 10,000 even. The deposit is only intended as a guarantee of good faith and also to meet the incidental expenses, and it is not likely to be more than Rs. 1,000 and that is why I fixed it at that amount. Now, I would have no objection if the hon. Minister wants to raise that limit to Rs. 2,000 or so."

3-30 p.m.

Diwan Bahadur M. RAMACHANDRA RAO PANTULU :—" Sir, I am afraid I cannot concur with all that my hon. friend, Mr. Sivasankaram Pillai, has said. It seems to me that cases arising out of the religious endowments are not akin to election disputes where private interests are involved. This is a question of proper management of public charities, and it seems to me that now that we are legislating for the first time on this subject, we must leave matters as they stand at present. We must see whether as a matter of fact frivolous applications are put in, and then take action on them. We are now assuming that all kinds of undesirable people will come forward with applications to the Board and that in order to prevent them from doing so, we must ask them to deposit a certain sum of money. It seems to me that it will be far wiser not to make any rules at present. The matter was discussed at great length in the Select Committee and it was decided that if twenty applicants were forthcoming

Clause 58—cont.

it was a sufficient guarantee of their *bona fides* and that was the only consideration which induced the Select Committee to require twenty persons to come forward with applications. Once twenty persons do come forward, it is unnecessary to assume bad faith on their part and again call upon them to deposit a sum before enquiry is started. In the present state, it is unnecessary to make such a provision and when twenty applicants join together and make a frivolous application it will be time enough to impose such a restriction. Again, I wish to ask what will become of the money that is deposited. If the court ultimately decides against the applicants, is it to be assumed that the money should be forfeited and that it should go to the coffers of the Board? The amendment of my hon. friend, Mr. Sivasankaram Pillai, does not say anything about this. It seems to me that the best course will be not to accept either of the amendments and leave things as they are in clause 58, namely, the requirement of twenty applicants to come forward with application before an enquiry is started. Nothing more need be done at present."

The hon. the RAJA OF PANAGAL:—"I am not very keen about the amendment. Because my hon. friend, Mr. Sivasankaram Pillai, moved an amendment, I thought I had better not limit the amount to Rs. 1,000, but leave the discretion to the Board. Now that the feeling of the House seems to be against the imposition of any restriction, I am not particular to press the amendment and therefore beg leave to withdraw the same."

The amendment was by leave withdrawn.

Clause 58 was put, passed and added to the Bill.

Clause 59.

Clause 59 was put, passed and added to the Bill.

Clause 60.

Sub-clause (2).

(Amendment No. 198.)

Mr. M. SURYANARAYANA:—"Sir, I beg to move—

For the words 'thirty days' *substitute the words* 'sixty days'.

Sir, this is a new Bill and it may take some time before the public get themselves accustomed to the procedure, the period of limitation, etc., prescribed therein. I, therefore, think that some time should be allowed."

The hon. the RAJA OF PANAGAL:—"I am prepared to accept the amendment that follows the one just now moved by my hon. friend, Mr. Suryanarayana."

The amendment was by leave withdrawn.

(Amendment No. 199.)

Rai Bahadur T. M. NARASIMHACHARLU:—"Sir, I beg to move—

For the words 'thirty days' *substitute the words* 'three months.'"

The hon. the RAJA OF PANAGAL:—"Sir, I accept the amendment."

The amendment was put and carried.

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Clause 60—cont.

Sub-clause (3).

(Amendment No. 200.)

Mr. C. VENKATARANGA REDDI:—"Sir, I beg to move—

After the words 'and may' *insert the word* 'cancel.'

"Sir, my object in moving this amendment is this. If the clause is allowed to stand as it is, the court will have no power to cancel the scheme filed by the Board if the court is of opinion that there is no mismanagement in the particular institution for which the scheme is framed. It is only to give the power of cancelling the scheme to the court that I have tabled this amendment. The court, at present, has got power only to confirm, modify or to correct the scheme framed by the Board. I think my amendment is a very reasonable one and I hope it will be accepted by the hon. the Minister."

Rao Bahadur C. V. S. NARASIMHA RAJU:—"Sir, according to the clause as it stands, power is given to the court to confirm, modify or correct the scheme framed by the Board. If the court is satisfied on the facts of the case that there is no necessity at all to frame a scheme, the court is not empowered to cancel the scheme. If this amendment is accepted, such power will be given to the court. The whole thing rests on the question of fact, namely, whether there is mismanagement or not in an institution. Even in cases where the management has been going on thoroughly well, the Board may commit an error and possibly frame a scheme, and when that question comes before the court, why should the court be debarred from entering into the question whether the management is going on satisfactorily and whether any interference by means of a scheme is necessary or not? It is only in cases where the court finds gross mismanagement, it can order the framing of a scheme. In cases where the court finds the work going on satisfactorily, why should it not be competent to say that no interference is necessary? Therefore, I think to hold the scales even between the Board and the trustees who take opposite views, the court should be empowered to cancel the scheme framed by the Board in cases where it finds the management is conducted satisfactorily."

Mr. M. SURYANARAYANA:—"If this amendment is not accepted, it would come to this. The Board will say to the court: 'Here, we have prepared a scheme. It is not your business to enter into the question whether a scheme is or is not necessary. You should take our *ipse dixit* on the matter and say that the scheme is necessary. Your business is simply to see whether the scheme framed by us is right; if not, you can modify or correct the same.' I wish to ask: is that the attitude which a Board should take towards a court? The proper course is to ask the court to see whether there is any necessity for the scheme at all and if so to modify or correct the scheme framed by the Board and if there is no necessity for the scheme at all, to cancel it altogether."

The hon. the RAJA OF PANAGAL:—"Sir, this question has been discussed at great length in the Select Committee, and that committee, if I remember right, was almost unanimously of opinion in favour of the clause as it is. I do not think that at this late stage of the Bill, we can enter into that discussion once again. One thing is evident. My hon. friend, Mr. Narasimha

Clause 60—cont.

Raju, admits that it is more or less a question of fact; and so far as the question whether there should be a scheme or not is concerned, I think the most competent persons will be the commissioners of the Board. In these circumstances, I cannot accept the amendment."

The amendment was put and lost.

(Amendment No. 201.)

Mr. C. V. VENKATARAMANA AYYANGAR:—" Sir, I beg to move—

After the words ' and may ' *insert the word* ' confirm'."

The hon. the RAJA OF PANAGAL:—" Sir, I accept the amendment."

The amendment was put and carried.

[At this stage the hon. the Deputy President vacated the Chair and Diwan Bahadur Sir T. Desika Achariyar occupied it]

(Amendment No. 202.)

Mr. C. V. VENKATARAMANA AYYANGAR:—" Sir, I beg to move—

After the words ' of the scheme as ' *insert the word* ' confirmed '.

" Sir, this is an amendment consequential on the previous amendment and I hope the hon. Minister will accept it."

The hon. the RAJA OF PANAGAL:—" Sir, I accept the amendment."

The amendment was put and carried.

Sub-clause (4).

(Amendment No. 203.)

Rai Bahadur T. M. NARASIMHACHARLU:—" Sir, I beg to move—

For the word ' No ' *substitute the word* ' An '.

" Sir, the next amendment that stands in my name will complete the one just now moved by me, and I do not know why it has been split up into two.

" Under this Chapter, the Board is authorized to frame a scheme and submit it to the court which may confirm, or modify or correct the same. Now, the modification may be so big as to leave one minor portion intact and all other portions may have been modified. The modification may come to 99 per cent leaving one per cent unmodified. This also amounts to modification in logic; so that the modified decree may affect much larger interests than was contemplated by the Board in their scheme. Again, what is the kind of court that will go into all these questions? According to the amendment in this House, the court may be that of a District Munsif, or a Subordinate Judge or a District Judge whichever the Local Government may authorize in this behalf. If a scheme is brought before a court and if that court is a District Munsif's Court, or a Subordinate Judge's Court or a District Court and if the scheme is modified or corrected or confirmed and if the decision of the court of the first instance is deemed final, then I submit that no greater calamity can ever befall this country. If no appeal is provided to the High

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Clause 60—cont.

Court, I submit it will be the greatest of misfortunes to our country. I therefore submit that the decision of the lower court should be made appealable to the High Court."

3-45 p.m.

The hon. the RAJA OF PANAGAL :—" Mr. President, my hon. friend, Mr. Narasimhacharlu, has given notice of two amendments, Nos. 479 and 480 on the agenda. Of these two, I shall begin with the second. So far as the second amendment is concerned, this House—"

Diwan Bahadur Sir T. DESIKA ACHARIYAR (*from the Chair*) :—" The second amendment is not before the House now."

The hon. the RAJA OF PANAGAL :—" Sir, my hon. friend, Mr. Narasimhacharlu introduced it in his speech."

Rai Bahadur T. M. NARASIMHACHARLU :—" I introduced it, Sir, for the purpose of a better understanding of the clause."

Diwan Bahadur Sir T. DESIKA ACHARIYAR (*from the Chair*) : —" The hon. the Minister will confine himself to the first amendment."

The hon. the RAJA OF PANAGAL :—" Then, so far as the first amendment is concerned, Sir, without the second amendment, it is a negation of the whole sub-clause. As such, it is not an amendment at all, and I do not know how it was allowed to be discussed. At the same time, Sir, I feel constrained not to accept it."

Rao Bahadur A. S. KRISHNA RAO PANTULU :—" Mr. President, so far as the present amendment is concerned, there is no inconsistency or defect in it, even if it merely provides that an appeal shall lie from a decree. An appeal shall ordinarily lie from decisions of courts unless there be some other provisions to the contrary in particular cases. The only question for consideration is whether in important matters concerning settlement of schemes, it is desirable that we should deprive the persons concerned of their right of appeal. I think we shall be taking a very narrow view of this Bill and of its operations if we hesitate to give the parties concerned a right of appeal in important matters like these. Let us also realize that in disposing of amendments relating to this clause, there has been some sort of hesitation to give power to the court to cancel a scheme framed by the Board ; and if there was no hesitation to insert the word ' confirmed ' at the instance of my hon. friend Mr. Venkataramana Ayyangar, there was hesitation to introduce the word ' cancel ' so far as the settlement of schemes was concerned. That by itself shows that in the decisions we have been arriving at, we have been taking a narrow view of the whole affair. If, as a matter of fact, we want that the Board should be in a position to file the scheme in court and to see that the whole matter is settled once for all, we must not hesitate to give all possible facilities to persons concerned for the purpose of testing the validity of these decisions in any manner possible. While we have agreed to give power to courts only for confirming or modifying schemes, I think it would be very unreasonable if we go further and say that no appeal shall lie from such decisions of the courts. If we look at the next clause, clause 61, we find that

Any scheme of administration which has been decreed under section 60 may at any time be modified or cancelled by the court at the instance of the Board.

Clause 60—cont.

"I only request hon. Members of this House to consider that clause while they appreciate the amendment now under discussion. If we not only decide that there should be no appeal as suggested by the hon. the Minister in charge, but go further and say that any scheme of administration which has been decreed under section 60 may at any time be modified or cancelled then we will be introducing the word 'cancelled' in clause 61 which was objected to so far as clause 60 was concerned. That is, so far as the Board is concerned, power to modify or cancel a scheme has been provided for under clause 61. Having given that power, to say that the persons affected should be deprived of the opportunity of even having a right of appeal is even more unreasonable. I think it is quite desirable that the hon. the Raja of Panagal should reconsider his position as to whether by taking away this power, he is furthering the cause of parties affected by such decisions."

The hon. the RAJA OF PANAGAL:—"Sir, I have already given reasons, as to why I am not prepared to accept the amendment. There is one other reason, against my accepting it, and it is this. As it is, an appeal from the District Court would mean an appeal to the High Court, under the ordinary revision powers of the High Court. This House however is not competent to add jurisdiction to the High Court."

Diwan Bahadur L. A. GOVINDARAGHAVA AYYAR:—"Sir, it might be that I have not been quite attentive to what the hon. the Raja of Panagal was saying, but I did not hear any ground given by him as to why he did not accept the amendment except that he said that he would not accept it. In the second speech that the hon. the Minister delivered in connexion with this motion, he gave a reason which I shall presently deal with. Now, Sir, let us first realize what exactly the position will be supposing the amendment that has been moved by my hon. friend is not accepted. For the time being, I shall not trouble myself with the question whether the appeal would lie to the High Court or to any other inferior court. I shall, therefore, mainly confine myself to the question of the desirability of an appeal lying against the decision of the court. Now, the House will observe that the Board has it in its power to take the initiative step, as it were, of framing a scheme, not of completely pronouncing upon it, because its decision would not be capable of being put into execution, and to give it any kind of operation it is necessary that the matter shall have to be taken up to the court. The court may be, as has been already pointed out, any court which is authorized by the Local Government to make such inquiries as this clause contemplates: it might be a Munsif, it might be a Subordinate Judge, or it might be a District Judge. But in these matters, as I have already submitted, you must take the clause in whatever construction it leads itself to. Then, this court to which the scheme is taken has the power not merely of confirming the scheme as suggested by the Board, but also the power of modifying and correcting that scheme according to its own lights. Now, what does this mean? It means that a Board composed of three gentlemen, and possibly of five, use their talents and elaborate a scheme. The matter goes up before a District Munsif, or a Subordinate Judge, or a District Judge and that gentleman thinks that there is some flaw in the view that has been taken and in the scheme that has been suggested by this Board, and says: 'I am not going to allow this scheme to pass unchallenged; I shall therefore make certain modifications.' Those modifications might be in very important

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Clause 60—cont.

particulars, and the result would be this, that the considered view of five persons, or of three persons, is to be upset by the view of another gentleman who knows that in doing it there is no higher authority that will set him right. Hon. Members who have good experience of litigation will know how exactly small-cause suits are in the majority of instances disposed of as compared with original suits. The result will be this, that a sense of irresponsibility will be necessarily engendered and possibly be encouraged amongst these judicial authorities who are to sit in judgment over the schemes suggested by the Board. That, I think, Sir, is sufficient to justify an appeal being allowed. Of course the appellate court will have the necessary power to mulct any party which is in the wrong in costs, so that there is not much chance of the powers of the court being abused. On the other hand, the respect that we ought to show to the Board itself requires that in such a case as the one that I suggest, there must be an appeal to a higher authority than the first court before which schemes come up for consideration.

"Another point was raised by my hon. friend the Minister and that is that it may be that an appeal lies to the High Court and we have no power to legislate for that court. I do not really understand, Sir, that argument and I do not know who is responsible for that. If we provide for an appeal, then an appeal will lie to the court to which appeals will lie from the decisions of the court against whose decisions this provides that an appeal should lie and the ordinary Code of Civil Procedure will apply. If it be to the District Judge, in the first instance it will go to him. If it is, on the other hand, to the High Court, the appeal will lie to the High Court; so that my submission, Sir, is that the second difficulty to which the hon. the Raja of Panagal has referred is one which really does not exist. After all, Sir, that is not an objection which ought to weigh with us so far as negativing the amendment goes; and if that objection is really valid, then there is no need at all for this provision, because if it is going to be an appeal to the High Court—and that is what it contemplates—then I submit that if no appeal can lie to the High Court at the instance of a local Legislature, there is no need for the sub-clause (4) at all."

Mr. R. Srinivasa Ayyangar:—"Mr. President, I would ask the hon. the Minister to accept the amendment moved by my hon. friend, Mr. Narasimhacharlu, more in the interest of the Board itself than in the interest of *matadhipatis*. For, it is quite possible to conceive of cases where a scheme taken before courts by the Board may undergo radical changes—changes of a root and branch character—that may not be quite acceptable to the Board; or, in other words, the Board may submit very many conditions and leave such a scheme before the court for its acceptance, but the court taking just the opposite view might turn it upside down and restrict it as much as possible and thereby create a grievance so far as the Board is concerned. What is the Board to do in such circumstances? Is the Board to sit tied down, as it were, seeing its helplessness in the matter? For, that will be the logical effect of it if sub-clause (4) were allowed to stand as it is. Therefore I think it is much better that this right of appeal is given to each party, and I should like to ask the hon. the Minister to accept the amendment more in the interest of the Board itself, though he may not be prepared to accept it from the standpoint of the *matadhipatis*."

The hon. the Raja of Panagal:—"Mr. President, I have already stated that this question was discussed at great length in the Select

Clause 60—cont.

Committee and the decision of the Select Committee was that there should be no appeal. My hon. friend, Mr. Govindaraghava Ayyar, raised one point, viz., that the courts would get an assurance thereby that their action would not be criticized by any higher authority. If the court takes a particular view under sub-clause (3) of clause 51, the Board itself may change it, and again it may go up to the court. So far as these courts are concerned, they are not so free and cannot have their own way. If in a moment of carelessness the court gives a wrong decision, it would be open to the Board again to move in the matter. It will not be just as in the case of small causes, but it will be different and it will be open to the Board to re-open the matter and go before the court once again."

Rai Bahadur T. M. NARASIMHACHARLU :—" Sir, this is rather an important question and the Government in their attempt to minimize litigation seem to be a little overshooting the mark. By not allowing an appeal, they will be simply stifling justice. In a case like this where large interests are involved, so far as the position of matadhipatis in the excepted temples is concerned, I submit that an appeal must be allowed to lie as a matter of ordinary mundane justice, and I fail to see on what principle sub-clause (4) has been brought in here unless it be to make the Board all-powerful. I would even suggest that an appeal may be allowed to lie to the Board itself against the order of the court. If they want the Board to be an all-powerful body, let there be an appeal to the Board itself from the decision of the court, but anyhow let there be an appeal. That is what I submit.

" The hon. the Minister said that we could not create a jurisdiction so that the appeal might lie to the High Court. But it must be remembered that when I framed the amendment, the court had not yet been modified in this House as it was done subsequently. I say, Sir, that in sub-clause (3) the words used are :

4 p.m.

and thereupon a decree shall follow in terms of the scheme as modified or corrected.

We know what decree means as defined in the Civil Procedure Code, and against all decrees as understood under the Civil Procedure Code there will be an appeal unless it is prohibited. It is with that object that sub-clause (4) has been introduced. We are not creating any new jurisdiction to the High Court. Even if this saving clause is omitted altogether, there will be an appeal against this decree. The word 'decree' is used in the sense in which it is understood in the Civil Procedure Code and against every decree there will be an appeal. Therefore, I submit that in the interests of justice let us not be overpowered in our anxiety to protect this Board as much as possible."

The hon. the RAJA OF PANAGAL :—" It is not the intention of this clause to take any special steps to protect the Board against any legal action taken against them. But, Sir, my difficulty is, as I have mentioned, that if a negative clause like 'no appeal shall lie' were to be accepted, then we would be practically legislating for the creation of a new jurisdiction. But in order to meet the wishes of the Opposition Members, I have no objection to delete sub-clause (4) of clause 60."

Rai Bahadur T. M. NARASIMHACHARLU :—" Certainly, I withdraw provided the other amendment is moved and accepted."

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Clause 60—cont.

The amendment was by leave withdrawn.

(Amendment No. 204.)

The hon. the RAJA of PANAGAL :—"I now move—

That sub-clause (4) *of clause* 60 *be deleted.*"

The motion was put to the House and carried.

Clause 60, as amended, was put to the House, carried and added to the Bill.

Clause 61.

(Amendment No. 205.)

Diwan Bahadur L. A. GOVINDARAGHAVA AYYAR :—"Sir, I beg to move—

(*a*) *Omit this clause.*

(*b*) *Re-number the subsequent clauses.*

Sir, this clause suggests that after a scheme is modified or cancelled by the court at the instance of the Board under clause 60 there can be a modification or cancellation of it by the court at the instance of the Board. It is somewhat difficult to understand what exactly the significance of this clause is. As a matter of fact, in any well-ordered scheme you will always find liberty to apply as a portion of the scheme so that when there is a change of circumstances which calls for any modification in the terms of the scheme, that will be provided for in the scheme itself. As it is, what would happen is this. When the Board is not satisfied with the decision of the court, as my hon. friend has pointed out, it will apply to the same court to have its decision modified then there might be further litigation on the matter. I fail to see, therefore, what useful effect this clause is likely to serve. But there may be this. It will give rise to unnecessary irritation as between the Board on the one hand and the court on the other. I can well understand cases arising where a Board finds in the light of circumstances that have come into existence subsequent to the framing of the scheme a modification of the scheme necessary. Now, the proper way for the Board to move in that matter will be to take advantage of a provision which the Board can well have introduced in the scheme itself by which, when there is any alteration in the circumstances, a modification of the scheme can be applied for or directions may be asked for from the court as to what has to be done in the light of the circumstances that have freshly arisen. That will be the proper course; but not to allow the Board to interfere with the scheme by making fresh applications to the court which has already brought its judicial mind to bear upon it. The ludicrousness becomes clearer when you find that after an appellate decision has been taken, the court which gave the original decree is asked to sit in judgment over the appellate decision or modify or cancel a scheme as settled by the appellate court which will be permissible under clause 61 if it is allowed to stand."

Rai Bahadur N. GOPALASWAMI AYYANGAR :—"Mr. President, in the first place, I do not know that every scheme provides for alteration of the provisions of such scheme. I quite recognize Mr. Govindaraghava Ayyar used the words 'any well-ordered scheme.' The provision as regards schemes in this Bill has been based on the assumption—rightly or wrongly is a matter

[Mr. N. Gopalaswami Ayyangar] [2nd April 1923

Clause 61—cont.

of opinion—that the schemes that have so far been framed are hardly well-ordered, that the administration of temples has not been conducted very efficiently . . ."

Diwan Bahadur L. A. GOVINDARAGHAVA AYYAR :—" May I remind the hon. Member that the schemes provided for here are the schemes for which the Board, which is going to bring about a very high order of things, is responsible ? "

Rai Bahadur N. GOPALASWAMI AYYANGAR :—" I was really referring to the provisions which were usually to be found in schemes and I was therefore referring to the experience of schemes which had already been framed. As regards the question whether schemes which are to be newly framed will be well-ordered or will be in an inefficient fashion, that is a question on which there may be difference of opinion.

" As regards the point taken last by the hon. Member, Mr. Govindaraghava Ayyar, this clause 61 is intended to apply not merely to schemes which will be framed after this Bill comes into force, but the provisions of this clause are sought to be applied to schemes which have already been framed under section 92 of the Civil Procedure Code."

Diwan Bahadur L. A. GOVINDARAGHAVA AYYAR :—" Sir, you will find that the language of the clause is ' any scheme of administration which has been decreed under section 60 . . ."

Rai Bahadur N. GOPALASWAMI AYYANGAR :—" I refer my hon. friend to clause 71—

and such scheme may be modified or cancelled in the manner provided by this Act.

" So, the language of clause 61 is intended to apply to schemes which are already in existence framed by courts under section 92 of the Civil Procedure Code, and in order to remove any doubt that may exist as to whether this clause does apply to such schemes, my hon. friend, the Advocate-General has given notice of an amendment which will make things perfectly clear.

" The question whether it is correct policy for the originating court to try and modify schemes which may have been settled by the highest appellate court in the land is really one of policy. This clause will apply to schemes which do not really provide for modification in changed circumstances. If the scheme provides for that, I dare say these provisions will apply."

The hon. the DEPUTY PRESIDENT :—" Does the hon. Member (Mr. Govindaraghava Ayyar) wish to reply ? "

Diwan Bahadur L. A. GOVINDARAGHAVA AYYAR :—" In obedience to your call I will reply."

The hon. the DEPUTY PRESIDENT :—" The hon. Member being the mover of the amendment, I called on him to reply and if he is not willing to reply . . ."

Diwan Bahadur L. A. GOVINDARAGHAVA AYYAR :—" Sir I am perfectly willing to reply. Now, in the first place, my hon. friend, Mr. Gopalaswami Ayyangar, said that schemes were not well ordered and that therefore I made too large an assumption. I would point out to him that if previous

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Clause 61—cont.

schemes are sought to be set right by means of this Bill, the future alone will show with what result. If these schemes were not well ordered, it is not because they did not contain a clause providing for liberty to apply. As a matter of fact, so far as I remember, there was only one scheme within my experience wherein there was not that provision. It may be that there are other similar schemes. In any well ordered scheme you will find this provision and if those schemes were not well ordered it is not because they failed to contain this provision, but it is owing to other circumstances, into which the Board is supposed to be very much better able to look than the courts have been. My submission is that when it is the Board, which under clause 60 is to settle schemes, and which under the statute is a creature under the immediate control of the Local Government—I have no doubt that the Board will be instructed in every scheme that it suggests for the consideration of the court—that there should not be this liberty. Therefore, it will appear that so far as that argument goes there is nothing in support of clause 61.

"Sir, it was stated that a certain amendment would be proposed which would go to show that some other schemes might be taken, by a rational view. . ."

Rai Bahadur N. Gopalaswami Ayyangar:—"Sir, I did not say that. I only said that the amendment which would be proposed would make the intention of the Bill perfectly clear."

Diwan Bahadur L. A. Govindaraghava Ayyar:—"I find, Sir, that there is an amendment standing in the name of the hon. the Advocate-General by which it is sought to include under clause 61 not merely schemes which have been decreed under clause 60 but also schemes which are within the purview of clause 71. Now, Sir, it seems to be a novel method of legislation that you should find the need for this provision in connexion with the schemes under clause 71, and then say that not only those schemes but certain other schemes in respect of which the same considerations may not apply must also be such as might be asked to be cancelled by the Board. Then, Sir, if really that is all that is meant, the proper course will be to tack on the provisions of clause 61 to clause 71 and make it clear that if the Board found that the schemes already settled required modification in any respect, then it may be competent for them to go to the court.

"This clause says that the Board is competent not merely to say that the schemes decreed by the court should be considered by the court in the light of added knowledge and the information that the Board can give, also but that the Board which was responsible for the schemes may place them before the court and that these are liable to modification or cancellation. This seems to be a novel piece of legislation. If as my hon. friend says, the schemes which have been already framed in respect of certain temples require modification, the proper course for the Advocate-General would be to make an amendment in clause 71, and allow clause 61 to be omitted."

4-15 p.m.

The hon. the Raja of Panagal:—"No further reply is needed."

The amendment was by leave withdrawn.

Clause 61—cont.

(Amendment No. 206.)

Mr. C. MADHAVAN NAYAR (Advocate-General) :—"The amendment which stands in my name runs as follows :—

After the words 'section 60' *insert* 'or which under section 71, is deemed to be a scheme decreed under this Act.'

I do not want to waste many words in explaining the reasons for my introducing this amendment. Hon. Members who have seated themselves behind me have already expressed sufficiently well the principles on which this amendment is introduced. It is impossible to bring within the scope of this clause schemes settled under clause 71, without an amendment of this kind. Therefore I beg to move this amendment."

The amendment was put and carried.

Clause 61 as amended was put, carried and added to the Bill.

Clause 62.

(Amendment No. 207.)

Rai Bahadur T. M. NARASIMHACHARLU :—"I beg to move—

In the proviso between the words 'may' *and* 'restrict' *insert the words* 'for reasons to be set forth in writing.'

I submit, Sir, that the Board should not simply issue orders, but that they should also state the reasons for their orders. They should not arbitrarily issue orders. I therefore move this amendment."

The hon. the RAJA of PANAGAL :—"I accept this amendment."

Clause 62 as amended was put, carried and added to the Bill.

Clause 63.

(Amendment No. 208.)

Mr. R. SRINIVASA AYYANGAR :—"I beg to move—

Omit this clause.

Sir, there was provision of a similar nature in the original Bill in clause 33, which evoked a storm of opposition, and I take it that out of deference to that opposition, which increased day by day, to that clause as constituted in the original Bill, the Minister appeared to have made some slight change. But now that clause comes in a new form dressed in a new suit which is not at all acceptable. We are aware of the fact that Government wronged the religious institutions in olden days by depriving them of the large sources of income which would have expanded in these days owing to rise in prices and increased land revenue assessment and substituting in its stead a fixed income. This was an extraordinary step which practically denuded all these religious institutions of their legitimate income. That process was adopted 60 years ago. But now having regard to the conditions of prices of food-stuffs at present, and having regard to the fact that the Government have had the benefit of successive enhancement of land tax, the Government themselves should, if really solicitous about these institutions, surrender them the extra benefit which legitimately belongs to them and which by some process of statesmanship had been taken away some years before. Now so far as the question of taking away of the surplus funds of the religious

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Clause 63—cont.

institutions is concerned, I submit it is a sacrilege to divert these funds for other purposes. In this connexion I may refer the House to some observations made in the 'Madras Law Journal':

Whatever the notions of the minority steeped in utilitarian ideas of life may be, the majority of Hindus will be shocked to find that instead of endowing their cherished temples in greater abundance as their Sovereigns of old were wont to do, it is seriously proposed to divert their funds for objects of material utility which are expected to be promoted by the expenditure of public funds. To the unsophisticated mind the proposal differs from confiscation pure and straight only in the procedure adopted and it pains us to think that this should be the first fruit of the change of circumstances which, in the opinion of the Minister in charge of the Bill, has made a departure from the principle of religious neutrality possible.

"I do concede that so far as the present Bill is concerned it has come out in a much better form from the Select Committee. But all the same I may say that it has not got rid of some of the obnoxious features.

"Now so far as the Bill seeks to resort to what is called *cypres* doctrine, it is open to criticism. This doctrine is always intended to be applied in the case of charitable trusts and not to religious endowments, and therefore it is that the following observations are applicable to the present case:

Apart from this political objection it must also be mentioned that the *cypres* doctrine belongs more to the law of charities than to that governing religious trusts. The course of English law has been rather peculiar in that on account of historical accidents it has encouraged charitable endowments more than religious endowments and we cannot in the present instance derive much help from the institutions of England.

"Now turning to the clause under discussion we find:

The trustee of the math or temple concerned or the board may apply to the court for sanction to devote the amount of the endowment, or such surplus as may be available, as the case may be, to religious, educational or other charitable purposes not inconsistent with the objects of such math or temple.

"Now a claim may be made by those who support the Bill that sufficient safeguards do find a place in the Bill and that the alarm raised by me is without foundation. But then, when we consider the various provisions of the Bill, and the agency to be operated upon for finding out ways and means just to satisfy the powers that be, we are afraid that the trustees and others will attempt to bring more funds from the religious institutions so that they may get into the good graces of those in authority. My submission is that for educational and other objects money must come from the general revenues, and not from the revenues of religious institutions which should continue to be exempted from this indirect taxation altogether."

The hon. the RAJA OF PANAGAL:—"This is a question that has been carefully considered in the Select Committee. The clause as introduced in the original Bill was considerably modified to meet the criticisms of the several parties. My hon. friend has quoted from the 'Madras Law Journal'. I dare say that that criticism does not apply to the Bill as it emerges from the Select Committee stage but to the original Bill. There is a great deal of difference between the original clause and present clause. Now referring to the question of the diversion of surplus funds for purposes other than those for which the temple or the endowment stands, this is what Sir T. Muttuswami Ayyar says:

One other matter of importance deserves to be mentioned in this connexion. There is a strong feeling, as evinced by the replies to our circular, that it is desirable to make a provision for enabling trustees and members of committee to appropriate any surplus of income permanently in excess of the requirements of the temple to educational or other charitable purposes not inconsistent with the objects of the institution. In several richly endowed temples there is a

Clause 63—cont.

considerable surplus even after due allowance is made for keeping the temple in repair and for making such improvements as may appear necessary or desirable, and in such cases it may appear that the appropriation of a part if not the whole of such surplus to educational or other charitable purposes is not at variance with the traditional usages of the country.

4-30 p.m.

"While the feeling is strong in favour of such diversion under legal sanction, there is also in some quarters a feeling against the surplus being applied to charitable purposes other than the object of the endowment. After all the provision is only permissive. In the case of temples managed by hereditary trustees, the proposal to appropriate surplus funds in this manner should emanate from the trustees themselves, and not from committees. In the case of other temples, application may be made either by the trustees or by the committees. In every case, the previous sanction of the District Judge is necessary, as such appropriation of surplus funds is, in effect, an extension of the original object of the endowment and must, therefore, be safeguarded by judicial sanction. Sir, this opinion of Sir Muttuswami Ayyar who both for orthodoxy and knowledge of law is one of our most eminent men finds expression in clause 85 of his Bill. He has made a similar provision and the present clause now sought to be amended by the hon. mover is only a copy of the clause of Sir Muttuswami Ayyar's Bill. The other Bills too had similar clauses and as recently as 1914 this Legislative Council passed an Act validating the use of surplus funds for the maintenance of English schools one at Vellore and another at Tirupati. I cannot understand why objection should be taken to this clause. For these reasons, I cannot accept the amendment."

The RAJA OF RAMNAD :—"I fail to see, Sir, why there should be any objection for a permissive provision like this. I will illustrate a case from my own experience which I hope will carry conviction to the hon. Member. Some one of my forefathers, Sir, had arranged for carrying pilgrims from the mainland to the island of Rameswaram in boats free of charges. After the railway was opened the plying of boats ceased. The question arose as to what to do with the funds realized from the endowed properties. The taluk board which has the control decided to spend the money on hospitals and dispensaries in one of the pilgrim centres where pilgrims gather throughout the year. If provision is not made in that way what is to become of the money? Who is to swallow it? Is the trustee to swallow it? Or is it to be thrown into the sea?" (laughter).

Rai Bahadur T. M. NARASIMHACHARLU :—"Give it to the Brahmans." (laughter).

The RAJA OF RAMNAD :—"If my lawyer friend from Cuddapah thinks that it would be permissible according to the *cypres* doctrine that can be done. I think, Sir, this illustration will carry conviction to the hon. mover."

Mr. R. SRINIVASA AYYANGAR :—"My friend, the Raja of Ramnad, wanted to know what is to become of the surplus money. All I wish to say is that there are so many temples whose walls and mantapams are falling. There are so many vehicles needing repair. Is the Raja of Ramnad going to pay for all of them? The intrinsic value of the math bears some relation to the property it holds. The hon. the Minister drew the attention of the House to the weighty opinion expressed by the late Sir T. Muttuswami Ayyar and stated that this clause had been prepared on the same lines. But as against

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Clause 63—cont.

that I have stated the opinion of another distinguished countryman of ours, Sir Sankaran Nayar. In 33 *Madras*, he distinctly says that the matadhipati is not bound to utilize the surplus funds but he may allow it to accumulate. This view found favour in the Privy Council and is reported in 44 *Madras*."

The hon. the RAJA OF PANAGAL :—" May I rise to a point of order? The opinion I quoted as that of Mr. Muttuswami Ayyar is subscribed by Sir Sankaran Nayar also."

Mr. R. SRINIVASA AYYANGAR :—" But that has been considered later by the Privy Council in the recent case known as the *Vyasaraya Math case* in 44 *Madras*, 831, where the entire position has been reviewed. The learned Judges of the Madras High Court have been found fault with for confounding the matadhipatis with trustees."

The hon. the RAJA OF PANAGAL :—" The opinion expressed there is the opinion of a judge who has to apply the existing law. There he had to interpret the law as it stood then."

Mr. R. SRINIVASA AYYANGAR :—" Whether he expressed his opinion as a jurist, a legislator or a judge, anyhow there is the opinion. It does not lose its value because he assumed a different role. The effect of passing this clause will be that we will with one stroke of the pen set at naught the well-considered opinion of the Judicial Committee of the Privy Council. That is the logical effect."

The motion was put and lost.

Sub-clause (1).

(Amendment No. 209.)

Rao Bahadur A. S. KRISHNA RAO PANTULU :—" I move —

After the words ' no longer exists ' *insert the words* ' and it is impossible to re-establish such machinery '.

I believe, Sir, that probably this is an omission when the Bill was drafted or when the Bill was amended by the Select Committee. The present clause reads as follows :—

Where the purpose of a religious endowment has from the beginning been, or has subsequently become, impossible of realization, or where the machinery for effectuating the original purposes of the endowment has failed or no longer exists . . . etc.

I think, Sir, when you once provide for the contingency where the machinery for effectuating the original purposes of the endowment has failed or no longer exists as a criterion for the application of this doctrine, you must also provide for cases where it is impossible to re-establish such machinery. Because take for example the case of one person who having been entrusted with the task of performing certain charities does not do the same, it may be possible to continue the charities by appointing another in his stead. It is only in cases where it is not possible to re-establish the machinery for effectuating the original purpose when you can reasonably ask for an application of this *cypres* doctrine. Therefore, Sir, I think that this is an omission in the provisions of this Act which it is absolutely necessary to rectify by the insertion of the words I have already stated."

Clause 63—cont.

The hon. the RAJA OF PANAGAL :—" Sir, the addition of the words my hon. friend wants to have would certainly effect a great change in the object for which the clause is intended. In fact if any such consideration is to be given to the question it is open to the board to do that. I cannot understand why we should have these details here and besides by adding this clause to the existing clause we would make it almost impossible for any court to come to a conclusion that in a particular case the funds can be availed of for purposes not inconsistent with the original objects of the endowment. It would be very difficult to decide whether it is actually impossible to achieve the object originally intended. As in the case pointed out by the Raja of Ramnad it may be possible for a person to have some boats for purposes of show. But they will serve no useful purpose. In these circumstances I cannot accept the amendment."

The amendment was put and lost.

(Amendment No. 210.)

Rai Bahadur T. M. NARASIMHACHARLU :—" I move—

Omit the words beginning with 'or where' *and ending with* 'such purposes'.

" What I say is this. I have no objection to the contingency of the object becoming impossible or the machinery for effectuating the original purpose having failed. But I do object to this clause, where after satisfying adequately the purposes of the endowment there is a surplus which is not required for such purposes. I object to the surplus being utilised for educational and other charitable purposes. My reasons are these. If you only give this loophole here the board and the committee who are not religiously inclined will at every step in the budget and in the accounts take exception to this item or that item and bring about a big surplus for the purpose of being utilised on an educational institution. Therefore, Sir, this is a very dangerous thing. Another thing is where can there be a surplus ? Every temple requires so much repairs. Every math requires the feeding of so many disciples. Recently the Madras High Court gave a ruling to the effect that the debts incurred by the head of a math on account of feeding the disciples are not binding on the successors. No doubt an objection has been raised. With due deference I submit that that decision is wrong. I am confident that it will be very soon revised. I have no doubt about that (laughte). What I do say is that our charitable and religious institutions have not got sufficient funds. You can only fill up your purse by retrenchment here and there. The axe of retrenchment is sought to be brought in even religious institutions also."

The hon. the RAJA OF PANAGAL :—" I oppose the amendment. My friend, the hon. mover, says that in any case the surplus should not be utilised for purposes other than those for which the endowment was made. I cannot accept that view. The question has been discussed at great length in the Select Committee."

The amendment was put and lost.

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Clause 63—cont.

(Amendment No. 211.)

Mr. T. SOMASUNDARA MUDALIYAR :—" I move—

After the words ' the purposes of the endowment ' *insert the words* ' and setting apart a sufficient sum for renovation or repair of the temple or math or other buildings of the endowment '."

The hon. the RAJA OF PANAGAL :—" I accept it."

The amendment was put and carried.

(Amendment No. 212.)

Diwan Bahadur T. N. SIVAGNANAM PILLAI :—" Sir, I beg to move—

Between the words ' concerned ' *and* ' or ' *insert the words* ' or the committee '.

4-45 p.m.

The Bill contemplates four authorities, two inferior and two superior, viz., the trustee of the temple and the trustee of the math, the committee and the Board. These have been recognized in the Bill. But in this clause only three authorities have been put in and not the fourth. I do not know if it is omitted for any good reason. If not, I suggest that the words ' or the committee ' be put in as mentioned in the amendment. If these words are inserted, the clause will read like this : ' the trustee of the math or temple concerned or the committee or the Board '."

Rai Bahadur N. GOPALASWAMI AYYANGAR :—" Sir, I am to say that the Government accept the amendment."

Rao Bahadur C. V. S. NARASIMHA RAJU :—" Sir, the scheme is that either the Board or the trustee is to move the court as regards the utilization of surplus funds. The committee occupies a very subordinate position. The whole object is that the initiative may be taken by the committee and it may submit proposals to the Board and if the Board approves of the proposals, it will move the court. There is no meaning in saying that the Board, which is inaugurated for the first time, should be deprived of the power ; nor there any meaning in giving it to the subordinate body. If this amendment is accepted, the position will be this. The proposal will not be examined by the Board. The committee itself may move the court and get the necessary sanction. If so, what is the purpose of the Board ? Is it not necessary that there should be co-ordination and examination of such details by the Board ? I submit that such wide powers should not be given to the committee."

Rai Bahadur N. GOPALASWAMI AYYANGAR :—" Sir, if the argument of my hon. friend, Mr. Narasimha Raju, is to be pushed to its logical conclusion, we ought to omit the words ' the trustee of the math or temple concerned ' from the clause as it stands. The clause gives the power either to the trustee or the Board to make the application. The scheme of the Bill contemplates in regard to the non-excepted temples that the immediate controlling authority should be the local committee and it is certainly not without justification that my hon. friend, Mr. Sivagnanam Pillai, has proposed to insert the words ' or the committee '. In the case of these temples, the committee certainly is in a much better position to judge the circumstances of the particular case than the Board. After all, when the principle of alternative application is accepted in this Council, I do not see the reason why we should not accept this amendment giving the power to the committee also."

Clause 63—cont.

The amendment was put and carried.

(Amendment No. 213.)

Diwan Bahadur L. A. GOVINDARAGHAVA AYYAR :—" Sir, I beg to move—

'*For the words* 'or the Board' *substitute the words* 'on obtaining the sanction of the Advocate-General or the Collector of the district in which the math or temple to which the endowment is attached may be situate, any two or more persons interested in such math or temple.'

" I may at once state, Sir, that I am not keen on the words 'the Board' going out. What I am keen on is that the words I have asked to be substituted, might be allowed also to become part of the clause. My hon. friend, Mr. Sivagnanam Pillai, referred to four authorities as having the capacity or power to apply to the court for the diversion of surplus funds. But I find the Bill refers only to two, and with the addition that has been made by the acceptance of the previous amendment three, namely, the trustee of the temple or the math concerned, the committee and the Board. I want the fourth authority to come in and that is two or more persons who are interested in the math or temple. Now, Sir, it is not any two or more persons that I would like to be given the power to apply. I say they must obtain the sanction of the Advocate-General or the Collector of the district in which the math or temple to which the endowment is attached may be situate. The effect of accepting my amendment will be this : that persons who are in intimate touch and knowledge of the circumstances may, in addition to the trustees of the particular endowments and the Board and the committees concerned, have the power to apply to the court for the purpose of effecting the beneficent purposes to which clause 63 refers. Now, Sir, I must confess that although the purposes to which clause 63 refers cannot be justified on the doctrine of *cypres*, taking into consideration the circumstances of our institutions, the enormous funds that some of them could command, the continued waste, if nothing worse, that has characterized the application of those funds in the past and the necessity that there is for a useful devotion of the funds of these institutions, I venture to think, Sir, that the purposes that are mentioned in this clause are purposes which ought to be met with the acceptance of this House ; and it is only by way of widening the beneficent provisions of this clause, with which, I take it, the Government are perfectly in sympathy, that I propose this amendment, namely, of giving the power to two or more persons interested in the temple or math of obtaining the previous sanction of the Advocate-General or the Collector as the case may be to apply to the court for the utilization of the surplus funds for purposes indicated in this clause, and I hope the Government will accept this amendment."

The hon. the RAJA OF PANAGAL :—" Sir, I am indeed glad that my hon. friend, Mr. Govindaraghava Ayyar, has certified that this is a very, very desirable clause. But at the same time, so far as the amendment is concerned, I think it is not necessary. For, if any persons who are interested in the institution do want to move the court, it is quite open for him to move the Board and the Board may then take action. It can take action either by itself or on the information of any persons interested in the institutions. The

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Clause 63—cont.

introduction of the sanction of the Advocate-General or the Collector will only complicate matters. In these circumstances, I am not prepared to accept the amendment."

Diwan Bahadur M. RAMACHANDRA RAO PANTULU :—" Sir, I should at once say that my hon. friend's sympathy has really . . ."

The hon. the RAJA OF PANAGAL :—" I did not say that I had any sympathy either with this or with that. I only said that I felt glad."

The hon. the DEPUTY PRESIDENT (*from the Chair*) :—" It implies sympathy " (laughter).

Diwan Bahadur M. RAMACHANDRA RAO PANTULU :—" Well, Sir, my hon. friend's appreciation of my hon. friend, Mr. Govindaraghava Ayyar's statement in regard to this matter has really ended in his opposing the amendment of Mr. Govindaraghava Ayyar. The real object of the amendment is to provide for a continuance of the existing remedies in addition to the remedies provided in the Bill. The existing remedies are the permission of the Collector or the permission of the Advocate-General. My hon. friend, the Minister, may contemplate the contingency of neither of these parties mentioned in this clause taking action under the provisions of this Act. In such a case, two persons may be permitted to apply to the Advocate-General or the Collector who can hold an enquiry before they give the necessary permission. After all, it is for the diversion of funds and with the permission of two independent authorities, the very same remedies can be had. My friend, the hon. the Minister, may contemplate a case of a trustee not moving the court, the committee being absolutely obstructive and the Board being indifferent, for the diversion of these funds. In such a case, two persons may apply to the Advocate-General or the Collector for permission to move the court. This is an independent remedy and an existing one. It is in that light that this amendment has been put forward. After all, my hon. friend, the Minister, is interested in having a proper diversion of surplus funds, and I do not see any reason why a fourth party also should not have this power of moving the court. I am surprised that the hon. the Minister has not taken advantage of the suggestion that has been made by my hon. friend, Mr. Govindaraghava Ayyar."

The hon. the RAJA OF PANAGAL :—" One word, Sir. My hon. friend has at least conceded that in the case of the Board, it is nothing but indifference that will stand in the way. I think those interested in the matter may beg the Board to take the necessary action. There is no difficulty whatsoever. Therefore, since there are four authorities constituted who are interested in the matter and who, even if they themselves are not prepared to move, can be made to move by others who are interested, there is no necessity for this amendment."

Diwan Bahadur M. RAMACHANDRA RAO PANTULU :—" An application may be made to the Board, but the Board may not move."

Diwan Bahadur L. A. GOVINDARAGHAVA AYYAR :—" Sir, if I understand the hon. the Raja of Panagal correctly, the only argument that he advanced is that there is no necessity for this amendment and not that he thought that this amendment was in any way harmful. If it is merely a matter of no necessity, I think he might defer to the opinion of those who think it is

Clause 63—cont.

necessary and allow it to go in, because even of his own saying, the amendment is not in any way going to defeat the purpose intended by this Bill and some of us think that it might further that purpose."

The amendment was put and lost.

(Amendment No. 214.)

Rai Bahadur T. M. NARASIMHACHARLU :—" Sir, I beg to move—

Omit the words ' educational or other charitable '.

Even if the surplus funds are to be utilized, my point is, let them be utilized on religious purposes only and not divert the funds to educational or other charitable purposes. The object of my amendment is obvious. We cannot rob Peter to pay Paul. That is my object and I therefore say, please omit the words ' education or other charitable '."

The hon. the RAJA OF PANAGAL :—" Sir, there is no fear of robbing Peter and paying Paul, because we are concerned only with the surplus funds. If there are surplus funds, the question is, how best are we to utilize those surplus funds ? We say they may be utilized for religious, educational or other purposes. Education, as my hon. friend will admit, is necessary to improve even spirituality. General enlightenment is a condition precedent to the development of spirituality. I, therefore, do not see any reason why these funds should not be utilized for educational and other charitable purposes also."

Rai Bahadur T. M. NARASIMHACHARLU :—" I want religious education, Sir, so that people may have something of religion in them."

The amendment was put and lost.

(Amendment No. 215.)

Rao Bahadur T. NAMBERUMAL CHETTIYAR :—" I beg leave to move—

For the words ' educational or other charitable purposes not inconsistent with the object of such math or temple ' *substitute the words* ' education of the same persuasion as that of the temple or math concerned, after duly reserving not less than 50 per cent of the surplus for unforeseen emergencies '.

5 p.m.

Sir, the Bill as originally issued, raised a storm of opposition, not to mention some resentment, among the Matathipatis, trustees and managers of temples, as the provisions of this section were meant for the diversion of the surplus funds for secular purposes. But that feeling has considerably mellowed down after the Bill has emerged from the Select Committee. There is still some discontent and heart burning as a large portion of this section sanctions the diversion of surplus funds to purposes other than the promotion of religious institutions.

" I beg to point out that this clause, as it stands, is unsuitable from the orthodox point of view. Educational purposes not inconsistent with the objects of the temple may mean, for example, such things as secular education, sanitation, athletic sports and the like. These are not inconsistent with but are certainly alien to, and not in furtherance of, the objects of the math or temple. Educational purposes must therefore be limited to mean education

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Clause 63—cont.

of the same religious persuasion as that of the temple or math concerned. To make it so general as in the provision will provoke criticism and give room to differences of opinion. I therefore confine myself to a particular course, namely, religious education of the same persuasion as that of the temple or math concerned.

"In the previous Bill issued by such an eminent person as Rama Ayyangar, section 37 advocated the diversion of surplus funds to the maintenance or endowment of any Sanskrit schools or colleges or the promotion of the study of Sanskrit literature. In Robinson's Bill, litigation for recovery of temple property is provided for. Ragunatha Rao's Bill recommends diversion of surplus funds for secular purposes. Sullivan's Bill provides surplus funds to be devoted in such manner as would be conducive to the interest of the institution concerned. Muttuswami Ayyar's Bill requires diverting of the surplus funds for charitable purposes not inconsistent with the objects of the institution. Our present Bill goes on the same lines as its illustrious predecessors but the reason why these Bills have not become law is not far to seek. This surplus fund, if diverted for purposes other than religious institutions, will mean breaking of religious neutrality which was all along conceded. This provision of surplus funds for other purposes was the stumbling block for the passing of the previous Bills into law. I wish that this Bill may be saved from the fate of its predecessors. So, let us be as clear as possible and say that these surplus funds shall be devoted to religious and religious purposes alone and not for any other purpose. Unless this is done, I do not think the Bill will be passed into law."

The hon. the RAJA OF PANAGAL:—"Sir, the closing words of my hon. friend are that by the introduction of this clause into the Bill, the Government will be breaking religious neutrality. I am afraid, Sir, it is not for the first time that it is being done nor can it be objected to at all. In 1843, when the temple of Tirupati was handed over to a trustee, they had, I understand, Rs. 40 lakhs to the credit of the management and that amount was utilized for the purpose of education and not one of us had any objection to it."

Rao Bahadur A. S. KRISHNA RAO PANTULU:—"I may point out, Sir, that objection was raised in this Council several times though it did not succeed."

The hon. the RAJA OF PANAGAL:—"But later on, for a long time, there have been two English schools, one at Vellore and another at Tirupati, maintained from the funds of the Tirupati temple, and not one of us objected to it. On the other hand, when the Privy Council took objection to this diversion, some hon. Members came forward with a Bill and had it passed into law. I cannot understand why the hon. Member should accuse the present Government for any attempt in that direction.

"Sir, as to the question of utilizing those funds for educational purposes, I do fail to see any reason in my hon. friend's argument. General education is absolutely necessary even before training in religion can be had. So any amount of money spent on that will be spent for religious purposes. So is the case with other charitable purposes. Charity and religion are two things almost identical so far as the Hindus are concerned. So when the diversion is made in these directions, it cannot be objected to.

Clause 63—cont.

"Then, there was one point raised, that is, there might be unforeseen requirements. After accepting the hon. Mr. Somasundara Mudaliyar's amendment, that question does not arise. I have accepted his amendment which requires a portion of the surplus funds to be set apart for repairs and other unforeseen circumstances."

Rao Bahadur T. NAMBERUMAL CHETTIYAR:—"Sir, the latter portion of my amendment is, properly speaking, covered by Mr. Somasundara Mudaliyar's amendment, which has been passed. But the fixing of the maximum of 50 per cent is what is provided for now. If this 50 per cent is introduced I shall be satisfied. The other portion is about this surplus fund being diverted only to educational purposes. If the hon. the Minister would only alter the clause as suggested in my amendment, he would be earning the gratitude of every one of the temple-going people."

The amendment was put and lost.

(Amendment No. 216.)

Rao Bahadur A. S. KRISHNA RAO PANTULU:—"I beg to move—

After the words 'charitable purposes' *insert the words* 'in or near the locality where the endowment exists'.

Sir, it will be remembered that even at the time of the discussion of the principles of the Bill when it was introduced in this House, the opinion was expressed in various quarters that even after sanctioning the diversion of funds as contemplated in this Bill, there should be a provision for expenditure of that money in or near the locality where the endowment exists. The absence of a provision to this effect is likely to lead to dangerous consequences. In passing any legislative enactment, let us not do anything as relying upon the commonsense of the persons who will be called upon to go into the issues involved. We must as far as possible try to carry out the objects of the endowment and fulfil the trust reposed in the managers of those trusts. In this particular case, if you do not limit the incurring of expenditure in or near the locality where the endowment exists, cases might arise of surplus funds realized in the far-off Tinnevelly being utilized for Berhampur or *vice versa*. I do not think that those who are interested in the maintenance of these institutions in a satisfactory manner ever contemplated such a contingency. The only possible objection that may be raised is: why don't you expect the court to consider those questions in a satisfactory manner? Why don't you expect the court to take a commonsense view of the whole situation? Unless the hon. the Minister in charge of the Bill can point out reasons as to why we should not limit it in the form I have proposed, I cannot accept his suggestion. All I say is you must be in a position to incur expenditure in or near the locality. Is it to be supposed that you cannot imagine any scheme of educational progress or any one of a charitable character in or near the place where you find a religious institution getting a large surplus? I find it difficult to believe that it would be impossible to devise a scheme of educational progress or works of public utility in or near the place where you realize a large surplus revenue. I ask this House to consider whether those who are interested in the welfare of these institutions would appreciate the idea of a large order being given to the court in this respect. For these reasons, I think it is necessary to limit the expenditure to the place where the endowments exist."

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Clause 63—cont.

The hon. the RAJA OF PANAGAL :—" The discretion is left to the court. I do not think it is desirable to limit or fetter that discretion. In these circumstances, Sir, I cannot accept the amendment."

The amendment was put and lost.

(Amendment No. 217.)

Diwan Bahadur M. RAMACHANDRA RAO PANTULU :—" I beg to move—

For the words ' not inconsistent ' *substitute the word* ' consistent '.

" Sir, my hon. friends will realize the difference between the one and the other. Certainly ' consistent ' is much more positive than ' not inconsistent.' That is quite plain to everybody including my hon. friend the Minister. If you are really enacting a law for the diversion of these funds, the original purpose cannot be fulfilled in a negative way. There are many things which are not inconsistent and it is much more definite to say that the diversion is consistent with the original objects of the endowments."

5-15 p.m.

Rai Bahadur T. M. NARASIMHACHARLU :—" I have also given notice of an identical amendment and I wish to add a few words to what Mr. Ramachandra Rao has said. In this sub-clause the words used are ' to religious, educational or other charitable purposes '. The educational need not necessarily be religious or consistent with the object of the institution and the only condition that would justify the diversion is that the purpose should not be inconsistent with the objects of the endowment. For instance, if the math is not prohibited from the spending of money previously on objects other than those for which the math was established, it will suffice. What I would say is that the maths, as we all know, are intended for the propagation of a particular persuasion of Vedantic philosophy. My contention is that educational or other charitable purposes must be consistent with the development and progress of that persuasion of Vedantic philosophy and nothing else. Therefore I submit, Sir, by having the words ' not inconsistent ' the sum may be utilized for educational institutions which are not at all Hindu, which may be Christian, Muhammadan or Jewish, and similar is the case of charitable purposes. I submit therefore that the words ' not inconsistent ' afford a loophole which will enable persons who are entrusted with this money to spend it on purposes other than those for which the math or temple was founded. This kind of diversion will be opposed to all principles of justice."

The hon. the RAJA OF PANAGAL :—" Sir, the adjectival clause, ' not inconsistent with, etc., ' is altogether different from ' consistent with '. The words ' consistent with ' limit the scope of the objects for which the diversion can be made. It may not be easy to find out what is really consistent with the object of the endowment. On the other hand, it will be less difficult to show what particular object is not inconsistent with the object of the endowment. Sir, in any case this question has been engaging the attention of this part of the country not during two or three years past but for the last 30 or 40 years and I find, Sir, in Sir T. Muttuswami Ayyar's Bill a clause in which the words ' not inconsistent with ' are used. So, Sir, I do not think I can accept the amendment."

Clause 63—cont.

Rao Bahadur A. S. KRISHNA RAO PANTULU :—" Sir, to avoid further discussion I propose to speak on this amendment as it relates to the next one standing in my name. The next motion of which I have given notice is to substitute the words ' in strict conformity with ' for the words ' not inconsistent with '. I am really surprised that the amendment of my hon. friend Mr. Ramachandra Rao, which is unduly modest, should have been opposed. The grounds urged in opposing it are exactly the grounds which will induce the House to accept it. It is suggested that though it might not be possible to prove that the objects for which the funds are to be diverted are consistent with the objects of the math or the temple but that it might be possible to find out that they are not inconsistent with the objects. Sir, that is a process of circumvention which the House should not accept. Let us plainly make up our minds as to whether we will deliberately allow the diversion of funds for objects which are allied to the objects of the math or which are in conformity with those objects or consistent with them, or whether we should deliberately go the length of somehow or other managing as to make objects trying to take shelter under the negative. There is no use of our trying to create such subtle difference between objects consistent with and objects not inconsistent with those of the math or temple."

The hon. the RAJA OF PANAGAL :—" It is not a subtle distinction, Sir, but it is a broad one."

Rao Bahadur A. S. KRISHNA RAO PANTULU :—" Well, Sir, that is how the hon. the Raja of Panagal describes it, that it is a broad distinction. There is a stronger reason for this House to accept the amendment. The distinction is so broad as to induce the hon. Minister to accept the amendment and it only shows that the fears which several people have had about the diversion of funds for improper purposes are not unfounded. We have given our assent to a scheme whereby provision is made for diversion of surplus funds, a scheme whereby, after exhausting all the necessities so far as the temples are concerned, there will be expenditure incurred for useful objects like education. When all that has been done that we should be called upon to assent to the diversion for objects not necessarily consistent with the objects of the endowment is not at all justifiable."

The hon. the RAJA OF PANAGAL :—" I do not mean that the diversion for objects not consistent will be justified."

Rao Bahadur A. S. KRISHNA RAO PANTULU :—" The hon. Minister may say that he did not mean it. But so long as he says that there is a substantial difference—a broad difference—I will try to use his exact words—I think we ought to accept the amendment."

Diwan Bahadur M. RAMACHANDRA RAO PANTULU :—" The only remark that I wish to make is that the courts will find it extremely difficult to find out what are consistent and that it will be easier for the court to find out some object which is not inconsistent with the original object. That seems to be the opinion of the hon. Minister."

The motion was put and lost.

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Clause 63—cont.

A poll was demanded and the House divided thus—

Ayes.

1. Diwan Bahadur M. Ramachandra Rao Pantulu.
2. ,, L. A. Govindaraghava Ayyar.
3. Rao Bahadur A. S. Krishna Rao Pantulu.
4. ,, C. V. S. Narasimha Raju.
5. Mr. C. V. Venkataramana Ayyangar.
6. Mr. M. Suryanarayana.
7. Rai Bahadur T. M. Narasimhacharlu.
8. Mr. R. Srinivasa Ayyangar.
9. ,, M. R. Seturatnam Ayyar.
10. Sir M. Ct. Muttayya Chettiyar.
11. Rao Bahadur T. Namberumal Chettiyar.

Noes.

1. The hon. Sir Charles Todhunter.
2. ,, Sir Muhammad Habib-ul-lah Sahib.
3. ,, the Raja of Panagal.
4. ,, Rao Bahadur A. P. Patro.
5. ,, Mr. C. P. Ramaswami Ayyar.
6. Mr. E. S. Lloyd.
7. Rai Bahadur N. Gopalaswami Ayyangar.
8. Mr. C. Madhavan Nayar.
9. Diwan Bahadur T. N. Sivagnanam Pillai.
10. Mr. E. Periyanayagam.
11. ,, A. Ramaswami Mudaliyar.
12. Diwan Bahadur C. Arunachala Mudaliyar
13. Rao Bahadur P. C. Ethirajulu Nayudu.
14. Sir P. Tyagaraya Chettiyar.
15. Rao Bahadur T. Balaji Rao Nayudu.
16. ,, O. Tanikachala Chettiyar.
17. Mr. W. Vijayaraghava Mudaliyar.
18. Mr. J. Kuppuswami.
19. ,, B. Muniswami Nayudu.
20. ,, A. Muttukumaraswami Chettiyar.
21. Rao Bahadur C. Natesa Mudaliyar.
22. Mr. P. T. Rajan.
23. ,, W. P. A. Saundarapandiya Nadar.
24. ,, R. K. Shanmukham Chettiyar.
25. ,, T. Somasundara Mudaliyar.
26. ,, S. Somasundaram Pillai.
27. ,, P. Subbarayan.
28. Rao Bahadur C. Venkataranga Reddi.
29. Mr. S. Muttamanikkachari.
30. The Raja of Ramnad.
31. Muhammad Abdur Rahim Khan Sahib.
32. Khan Bahadur Muhammad Usman Sahib Bahadur.

Eleven voted *for* and thirty-two *against*. The motion was lost.

Sub-clause (3)

(Amendment No. 218.)

Diwan Bahadur T. N. SIVAGNANAM PILLAI :—" Sir, I move the following amendment :—

After the word ' concerned ' *insert the words* ' or the committee or the Board '.

" It is only a consequential amendment the principle of which has been accepted in amendment No. 212."

Rai Bahadur N. GOPALASWAMI AYYANGAR :—" Mr. President, I am to say that the amendment is accepted by Government."

The amendment was put and carried.

New sub-clause after sub-clause (3).

(Amendment No. 219.)

Rai Bahadur T. M. NARASIMHACHARLU :—" Sir, I beg to move the following amendment :—

5-30 p.m.

Add the following as sub-clause (4) :—

' (4) An appeal shall lie to the High Court against the order of the court under sub-section (2) or (3) '."

[2nd April 1923

Clause 63—cont.

The hon. the RAJA OF PANAGAL :—" Sir, I am not prepared to accept the amendment. The reasons I gave for not having accepted a similar amendment that had been moved by Mr. Narasimhacharlu also apply to this amendment."

Rai Bahadur T. M. NARASIMHACHARLU :—" Sir, I take it that even in its absence an appeal will lie."

The motion was by leave withdrawn.

Clause 63 as amended was then put to the House, passed and added to the Bill.

Clause 64.

(Amendment No. 220.)

Rai Bahadur T. M. NARASIMHACHARLU :—" Sir, I beg to move—

That this clause be omitted.

My point is this. The clause as it stands reads :

All cos'ts and expenses incurred in connexion with legal proceedings in respect of any religious endowment to which a Board or committee is a party shall notwithstanding anything contained in section 70 be payable out of the funds of such endowment.

" My point is whether all costs include the costs of those who have been defeated and who are other than the Board or committee. Suppose there is a litigation between some persons who are not members of the Board or committee on the one side and those bodies (Board or committee) on the other, and if the former party is defeated, are their expenses to be payable out of the funds of such endowment ? If that is the meaning of it, Sir, then, I say that this is not a fit provision to be retained in the Bill."

The hon. the RAJA OF PANAGAL :—" That is the meaning, Sir. The reason why that clause is retained is that even persons who are not connected with the management of a temple are allowed costs, and I cannot understand why persons connected with the management of these endowments should not be allowed costs when they go to court *bona fide* and with the intention of bettering these trusts."

The motion was by leave withdrawn.

Clause 64 was then put, passed and added to the Bill.

Clause 65.

Sub-clause (1)

(Amendment No. 221.)

Diwan Bahadur T. N. SIVAGNANAM PILLAI —" Sir, I beg to move the following amendment :—

Insert the word ' excepted ' *between the words* ' math and ' *and* ' temple '.

Sir, there are three classes of institutions for which the present Bill makes provisions. They are maths, excepted temples and ordinary temples. In the original Bill it was proposed to collect not less than three per cent for supervision charges. As the Bill is now redrafted, it would appear that, so far as the ordinary temples are concerned, 1½ per cent is to be paid to the Board and 1½ per cent to the committee. But as regards maths and excepted temples, they are let off with 1½ per cent to the Board and nothing to the committee. There is no committee existing to supervise over them and

2nd April 1923] [Mr. T. N. Sivagnanam Pillai]

Clause 65—cont.

I wish to know whether it was really the intention to allow a smaller percentage to maths and excepted temples for whose sake alone the Board has come into existence. The supervision which the Board exercises over ordinary temples is very slight, and for that they are made to pay 1½ per cent. But for maths and excepted temples for which the Board of commissioners has been instituted, they go scot free with a small contribution of 1½ per cent. If that is the deliberate intention of the framers of the Bill, I have nothing to object."

The hon. the RAJA OF PANAGAL :—" That is the intention, Sir. The Boards have considerable appellate work in connexion with the committee managed temples, and it is therefore reasonable that they should contribute towards the expenses for the constitution of the Board. In the case of excepted temples and maths, the committees have absolutely nothing to do with them, and that is the reason why no provision is made for contribution of those endowments to the committees."

The motion was by leave withdrawn.

(Amendment No. 222.)

Rao Bahadur T. NAMBERUMAL CHETTIYAR :—" Sir, I move the following amendment :—

For the words ' one and a half ' *substitute the words* ' two and a half '.

" In support of this motion, I only wish to mention to the House that in the previous Bills the percentages proposed were higher. In Mr. Rama Ayyangar's Bill so much as 6 per cent was advocated, that is, 4 per cent for trusts and 2 per cent for auditors. In Mr. Robinson's Bill 5 per cent for Boards and 8 per cent for trustees was recommended. In Mr. Sullivan's Bill so much as 5 per cent was advocated. But here in this Bill, the figure 1½ per cent appears to be too low. Whatever the opinion as to the above percentages may be, I think it is better to fix a larger percentage than 1½."

The RAJA OF RAMNAD :—" Sir, I oppose this amendment. The hon. the Minister has given some reasons. But the most important reason why the contribution should be as low as 1½ per cent is that these maths and excepted temples have very large endowments and therefore the contribution calculated at 1½ per cent on their incomes will be much higher than what it would be from ordinary temples calculated at three per cent. I therefore think that it is not desirable to raise the percentage."

The hon. the RAJA OF PANAGAL :—" Sir, I cannot accept this amendment. Already there have been complaints that the boards and committees are going to become very costly institutions. As such, I think any further raising of the contribution would be resented."

The motion was put to the House and negatived.

(Amendment No. 223.)

Rai Bahadur T. M. NARASIMHACHARLU :—" Sir, I move the following amendment :—

Between the words ' income ' *and* ' as the Board ', *insert the words* ' from immovable property within the Madras Presidency '.

[Mr. T. M. Narasimhacharlu] [2nd April 1923

Clause 65—cont.

"Sir, the word 'income' here is very vague and very general. When we considered the amendments to sub-clause (11) of clause 5 which we have already passed with reference to the definition of the term 'religious endowment' we excluded all gifts and personal offerings made to the heads of maths. Therefore religious endowments should not include the personel gifts or personal offerings to the heads of maths. That is why I say that this word 'income' is a very dangerous word here. It may mean not only the income from the immovable property, but it may also include the offerings and gifts given to the heads of maths. I therefore submit that this word 'income' may suitably be amended so as to exclude at least gifts and offerings which we have already excluded from the definition of 'religious endowment'. To retain this word will be very dangerous and will encroach upon the offerings and gifts which we deliberately excluded. Another point is this. The reason for my putting in the words 'within the Madras Presidency' is this. The maths have got properties not only in the Madras Presidency but in other Presidencies. Are we entitled to enact a piece of legislation which will include properties which are not within this Presidency and which are subject to the laws and regulations made in other Presidencies? Therefore I submit that we will be treading on very dangerous ground if we include immovable properties which are not situate within the Presidency of Madras. Anyhow, the gifts and offerings must not be included in the word 'income'. I earnestly request that the hon. the Minister may also concede now what he has previously conceded."

The hon. the RAJA OF PANAGAL:—"I am extremely sorry, Sir, not to be able to comply with the very earnest request of my hon. friend, Mr. Narasimhacharlu. My reason is this. If we say that income means income from immovable property, it would mean that if a particular endowment has invested its funds in Government paper or debentures or shares, then, whatever income the endowment may derive from those investments cannot be taken in calculating the income of that temple. Hence, it is impossible to accept that amendment. As to the distinction between income and gifts and offerings, it is obvious, and I need not dwell upon that question at this stage."

Rai Bahadur T. M. NARASIMHACHARLU:—"What seems to be obvious to him is not obvious to me, Sir. I want to know if he includes or excludes gifts and offerings."

The hon. the RAJA OF PANAGAL:—"That question has already been decided and it does not arise."

Rai Bahadur T. M. NARASIMHACHARLU:—"It must be specifically mentioned whether it includes or excludes, Sir, as otherwise difficulties may arise afterwards. What is discussed here will not be considered by the courts, who go only by the wording of the Act."

The motion was put to the House and negatived.

Sub-clause (3).

(Amendment No. 224.)

Mr. R. SRINIVASA AYYANGAR:—"Sir, I beg to move the following amendment:

That sub-clause (3) *be omitted.*

2nd April 1923] [Mr. R. Srinivasa Ayyangar]

Clause 65—cont.

The sub-clause reads :

> Religious endowments the administration of which is at the commencement of this Act governed by a scheme settled under section 92 of the Code of Civil Procedure, 1908, shall, notwithstanding anything to the contrary contained in such scheme, be liable to pay the contribution under this section.

There are certain schemes governing some of these religious institutions, schemes which provide for the submission of accounts and for the settling of various other matters of detail. It is rather difficult to understand why such institutions which are within the range or the ambit of a particular scheme should be called upon to make contributions to the Central Board which appears to be a greedy body and whose appetite also appears to be voracious, and I fail to understand why these institutions should be called upon to make any contributions to the Board."

5-45 p.m.

Diwan Bahadur L. A. GOVINDARAGHAVA AYYAR :—" Sir, this provision is altogether a confiscatory one and no reason has been assigned why this should be included in the Bill. This provision contemplates that by the mere passing of this Bill into law, the institutions in respect of which schemes have been already framed by the courts and which schemes are in operation and which do not require any interference on the part of the Board should, because of this provision, be compelled to pay large sums of money for the purpose of carrying on the work of the Board. I fail to see what justification there is in such a case. If of course the position is that the Board has something to do with respect to those temples or institutions, there may be some meaning. But the sub-clause contemplates that immediately on this Bill coming into operation as law, these institutions which are already the subject of schemes should make contributions.

" The hon. Minister was about to say when you, Sir, asked me to speak, that clause 71 will treat the schemes which have already been settled by the courts as schemes which are within the purview of this Bill. The introduction of that kind of fiction—it may be a fiction in law—does not justify any contributions being levied from the temples. All that it means is that for the purpose of interference by the Board in these schemes, we may take it that these schemes are settled by the Board itself. That is to say, the Board may give such institutions the same treatment as it would give to institutions in respect of which schemes have been settled by itself. That does not justify the levying of any contribution by the Board. Only if the Board chooses to meddle with the scheme, can it take any contribution. Mine, Sir, is not an imaginary grievance. Take for instance the temple at Tirupati. I believe the Government have an eye upon it and, if I am not mistaken, this clause is specially intended to hit the Tirupati temple. The latest income of the Tirupati temple is something like 14 lakhs. The Board may take a good deal of time before it makes up its mind whether the scheme governing that institution is one which calls for any interference or not. If the Board is going to act judicially—it is the contention of the Government that it is going to be composed of persons who are prepared to act judicially—then it will take a long time before it makes up its mind to decide whether the scheme requires modification or not. But even before coming to any decision, the Board may call upon the Tirupati temple authorities to contribute $1\frac{1}{2}$ per cent of the revenue so that the income to the Board from that source will come to about Rs. 21,000 a year. However estimable may be the purpose that this

Clause 65—cont.

Board is asked to serve, I do not at all see any justification for your going and despoiling the revenues of the temple at Tirupati for the purpose of maintaining the Board. Apart from the need for funds on the part of the Board, it seems to me that this is altogether an unjust provision. I am not sure if there are not other temples which stand in the same category as the Tirupati temple. For instance there is the Rameswaram temple. It has got an excellent scheme and I do not think any Board would come to the conclusion that interference is necessary in regard to that scheme. Yet according to the provisions of this Bill, that temple has to contribute 1½ per cent to the coffers of the Board. There is no reason, no principle, no justice and no necessity why these temples should be called upon to make any contribution until and unless the Board finds that there is something which requires to be set right with respect to them. But if the Board does exercise its functions in respect of these temples also, then they will be governed by the other provisions of the Bill."

The hon. the RAJA OF PANAGAL :—" Sir, I do not wish to detain this House for any length of time. I am glad that at least on this occasion, my hon. friend Mr. Govindaraghava Ayyar certifies that from one temple alone, that is from the Tirupati temple, we will be able to collect something like Rs. 21,000 for the maintenance of the Board. At one time he said that he was very diffident as to the wherewithal to maintain the Board."

Diwan Bahadur L. A. GOVINDARAGHAVA AYYAR :—" My fears are not in any way less now. Only the hon. Minister is trying to find out means by which he can confiscate the funds of particular temples with a view to carry on the work of the Board."

The hon. the RAJA OF PANAGAL :—" With regard to the justice or otherwise of this exaction, I have only to say that the Board has after all got the general power of supervision over all the temples subject to the provisions of this Bill. The Board has something to do with each and every temple and it is not as my hon. friend contends that it has nothing to do with the management of the Tirupati temple. Another thing is if the Board is not satisfied with the management of a particular institution it can at any moment jump in and frame a scheme for its proper management. All these things really justify the levy of contributions from these temples.

" The next point urged was that this particular clause was intended to make exactions from the temples. It is not so. Under clause 71 all the schemes that have already been settled are deemed to be schemes settled under this Bill. So there is already provision in the Bill to connect the endowments already having schemes with the present Act."

The amendment was put and lost.

(Amendment No. 225.)

Mr. C. MADHAVAN NAYAR (Advocate-General) :—" Sir, I beg to move—

Omit the words ' at the commencement of this Act.'

Sir, the object of this amendment is to bring within the scope of this sub-clause, religious endowments in which schemes may be settled by means of suits instituted before the passing of this Act."

The amendment was put and passed.

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Clause 65—cont.

(Amendment No. 226.)

Mr. C. V. VENKATARAMANA AYYANGAR :—" Sir, I beg to move—

For the words ' Notwithstanding anything to the contrary contained in such scheme ' *substitute the word* ' not '.

Sir, so far as the scheme temples are concerned, the Board is not expected to do any work at present though under clause 71 these schemes are deemed to be schemes settled under this Bill. But at present these scheme temples have nothing to do with the Board. These temples have got their own trustees, their own budgets and so on. So far as the Rameswaram and the Tirupati temples are concerned they are being very well conducted and we also see now and then the accounts relating to these temples are published in the newspapers. I do not see any reason why the Rameswaram temple should be asked to contribute anything at all. It is getting only an income of about three lakhs."

The RAJA OF RAMNAD :—" Does my hon. friend mean to say that the income from the Rameswaram temple is three lakhs ? "

Mr. C. V. VENKATARAMANA AYYANGAR :—" My information is that the income from the Rameswaram temple is something like three to four lakhs. If I am wrong the hon the Raja of Ramnad may correct me as he happens to be a member of that temple committee.

" So far as the temples which are already governed by schemes are concerned, they have to incur a heavy expenditure in the preparation of budget, in auditing and other expenditure and it is not necessary to call upon these temples to contribute anything to the exchequer of the Board at present. If my amendment is accepted, it will mean that these temples need not contribute anything at present, but if the Board finds it necessary later on to levy any contribution from these temples, ample power is given to the Board to give effect to their decisions. I submit, Sir, that to begin with the Board may not require any contribution from these temples which are already governed by schemes. These temples have already spent a good lot in litigation which has resulted in the framing of schemes and hence it is unjust to call upon them to contribute anything now. But if the Government later on finds adequate reasons, then the temples may be asked to contribute the requisite percentage to the Board."

The hon. the RAJA OF PANAGAL :—" Sir, I have already stated that the Board has something to do with the general supervision of all the institutions under the provisions of this Act. I have already given reasons in declining to accept the amendment of my hon. friend, Mr. R. Srinivasa Ayyangar, and for the same reasons I oppose the present amendment."

The amendment was put and lost.

Clause 65 as amended was put, passed and added to the Bill.

The House then adjourned at 5-56 p.m. to meet at 11 a.m. the next day.

L. D. SWAMIKANNU,
Secretary to the Legislative Council.